BOMBAY GAZETTE.

PUBLISHED THRICE A WEEK, ON EVERY MONDAY, WEDNESDAY, AND FRIDAY, MORNING.

PRICE 13 RUPEES PER QUARTER:—52 RUPEES PER ANNUM:—OR, IF PAID IN ADVANCE, 48 RUPEES PER ANNUM.

"Nothing extenuate, nor set down aught in Malice."

Vol. LII. BOMBAY: WEDNESDAY, MARCH 3, 1841. New Series No. 27.

CHARGES FOR ADVERTISEMENTS IN THE BOMBAY GAZETTE.

6 Annas per line, with the customary abatement to the Trade.
For others the charges are:
6 Annas per line for a first insertion.
3 do. do. for a second do.
2 do. do. for a third do.
the same being in immediately succeeding papers.

Under ten lines, 4 Rupees.

BOMBAY GAZETTE OVERLAND DISPATCH.

WHICH will contain a Precis of Indian Intelligence for the past Month.

The Public and Subscribers to the Gazette are informed that an Overland Monthly Dispatch, will be published at this Office for the present and every succeeding Mail—to Subscribers of the Gazette, *Gratis*.—Non-Subscribers one Rupee per Copy and to Subscribers for the above alone Rs. 10 per Annum, in England £1. 1s.

The Outstation Subscribers to the *Bombay Gazette* are hereby informed that if they will favor the Editor with the names of the Parties in England to whom they wish their Overland Gazette to be sent, they will be forwarded punctually through the Post Office here by each Steamer.

No Postage is levied by the Falmouth route and by Marseilles Two-pence.

Agents in England, Messrs. Grindlay, Christian and Matthews, 16, Cornhill, and 8, St. Martin's place, Charing Cross.

Bombay Gazette Office, No. 5, Forbes' Street.

THE SUBSCRIBERS of the BOMBAY GAZETTE are respectfully requested to take notice that the New Proprietorship commenced from the 1st of June 1840, and that all accounts &c. with the present concern will commence from that date.

THE SUBSCRIBERS to the GAZETTE are requested that whenever a change of residence or Station may take place, they will be pleased to give information of the same, in order, to prevent mistakes in forwarding their Newspaper.

COPPER PLATE PRINTING.

THE LADIES and GENTLEMEN of the Presidency and the Public in general are hereby informed, that VISITING and INVITATION CARDS will be neatly executed and on reasonable terms at this Office.

All orders for Copper Plate Engraving and Card Printing addressed to the Printer of this Paper will be carefully attended to.

TO THE ARMY AND NAVY.

THE following Works are for Sale and to be had on application at this Office.

MARRYAT'S CODE OF SIGNALS, Sixth Edition, of the 1st, 2nd, and 3rd Parts, with the Supplement to the above, and also the Honorable Company's Steamers and Ships of War, corrected and enlarged with considerable alterations and additions..... Rs. 2

Report of the Commissioners for Inquiring into the Naval and Military Promotion and Retirement..... Rs. 2

Proceedings of a General Court Martial held at Fort George on Captain D. G. DUFF, 16th Regt. N. I..... Rs. 1

BOMBAY SPORTING MAGAZINE.

MANY applications having been made to the EDITOR of this Journal, and promises of assistance given to get up a *Sporting Magazine*. It is hereby announced that the 1st No. of the BOMBAY SPORTING MAGAZINE was published on the 25th of December, and No. 2 will appear in March. The price to Subscribers is 12 Rupees a year, single numbers 4 Rupees. Communications will be thankfully received.

FOR SALE.—A few copies of the "CEYLON MAGAZINE" from No. 1 to 3, for September, October and November, Price 3 Rupees per Copy.—Apply at the Bombay Gazette Office.

Gentlemen desirous of becoming Subscribers to the above Periodical will be pleased to communicate the same to the Editor by letter post paid.

GOLD COLORED SHERRY FROM MESSRS. GRINDLAY, CHRISTIAN AND MATHEWS.

THE numerous applications for a regular supply of this favorite Wine, have rendered it necessary for Messrs. G. C. and M. to establish a depot at each Presidency. They now therefore, beg to announce that it will be supplied at the undermentioned prices, by Messrs. Colvin, Ainslie, Cowie and Co. Calcutta; Messrs. Binny and Co. Madras; and Messrs. Leckie and Co. Bombay. Orders to Messrs. G. C. and M. accompanied by a remittance, will be executed with a commensurate advantage.

16, Cornhill, and 8, St. Martin's place,
Charing Cross.
London.

Prices of the above Wine now on hand;
Per Butt..... Rs. 530
,, Hogshead..... ,, 270
,, Quarter Cask..... ,, 140
,, Dozen..... ,, 18

LECKIE AND Co.

Bombay, 3d March 1841.

NOTICE.

THE public is hereby informed that, the Processions of the TABOOT will be on the Bhendy Bazar Road from midnight on Wednesday the 3d till 3 o clock A. M. on Thursday the 4th Instant, and again from noon till 6 o'clock P. M. on Thursday the 4th Instant, and it is particularly desired, that Europeans and other persons not concerned in the Mohurrum, will refrain from driving or riding along the said Road during the time these Processions last.

P. W. LEGEYT,
Senior Magistrate of Police.

Bombay, 1st March 1841.

ज्याहेर खबर दिली जाते ऐशिजे बुधवार रारीख ३ चे मध्य रात्री पासून तीन वाजे तो पर्यंत आणि दुसरे दिवशी ब्रहस्पवारी तारीख ४ ह्याच महिन्याचे दुपारापासून संध्याकाळचे साहा वरे पर्यंत ताबुत भेंडीबाजारा मध्ये येतील ह्मणून साहेबलोक व दुसरे लोकांस ज्याहाना मोहरमासी काम नाहीं त्यास ताकीद करीतो ऐशीजे त्यारात्रीस व दीवसास गाडी मध्ये अथवा घोड्यावर बसून त्या रस्त्यातून जाउ नये तारीख १ मांच सन १८४१.

पी. डबलयु. लीजीट.
सिनियेर म्याजीस्त्रेट आफ पोलीस.

FOR SALE at the undermentioned, Quarts of best LISBON WINE and TINTO, fresh Payos and Chocolate, and Bottle Corks imported per *Princeza*, Real, at Goa, Bombay, 1st March 1841.

Hummum Street, No. 9.

L. BARRETTO.

NOTICE

IS hereby given that persons desirous of entering into a Contract for conveying Stores, supplying followers and performing the Hamallage duties of this Department for three years from the 1st of May next, may on application at this Office from 10 A. M., to 5 P. M. daily, Sundays excepted, obtain a Statement of the same with rates affixed, and such other information as they may require.

Verbal Offers for the Contract will be received at 12 o'clock on Monday the 1st of March next when persons will be required to bid a per Centage *below* the rates specified in the List above adverted to, at which they will undertake to perform the whole of the duties embraced therein in a prompt and satisfactory manner.

The Contractor will be bound to furnish promptly all such carriage and followers as may from time to time be required, or on failing to do so; it and there, or such other description of Carriage and followers as may be required in that behalf will be procured at his risk and loss, and in all such cases a fine of 30 per Cent upon the Amount of expences incurred, will be levied as liquidated damages for each and every such breach of Contract as often as the same may occur.

No persons will be allowed to tender for the Contract unless he previously depo-its in this Office Rs. (1000) one thousand, which will be forfeited in the event of delay, evasion, or refusal to execute the necessary deed of Contract should his offer be accepted, in which case he will be required to produce unexceptionable personal security in Rs. 20,000 for the due performance of the engagement.

The Annual outlay on account of the foregoing Contract is estimated at about Rs. (20,000) Twenty thousand, all further particulars relative to which will be communicated at the time of bidding, and no reason will be assigned for rejecting any offer.

J. C. HARTLEY, Lt.
Depty. Assist. Comy. Genl. in charge.

BOMBAY:
Depy. Comy. Genl's. Office,
13th January, 1841.

Marine Department.

NOTIFICATION.

Notice is hereby given, that it is the intention of the Honorable the Governor in Council, to despatch a Steamer, with a Mail for Suez, on Thursday the 1st of April next.

By order of the Hon'ble the Governor in Council,
P. M. MELVILL, Lieut. Col. *Secy. to Govt.*
Bombay Castle, 5th February 1841.

Shipping Arrivals and Departures.

ARRIVALS.

March 2d. French Brig Josephine, J. Gieck, Master, from Bordeaux 4th Oct. & Mahi 21st Feb.

SAILED.

Feb. 28th, Ship Shakspear, G. Henderson, Master, to Liverpool.

March 1st, The E. I. C. Steamer Victoria, Lieut. H. A. Ormsby Commanding, to Suez. *Passengers.*—The Hon'le James Farish, Mrs. Farish, Miss Farish, Mr. and Mrs. Fiere, and 2 Children, Sir John and Lady Awdry and Child, Dr. and Mrs. Henderson, L. Grant Esq. Mr. Rynsford and 2 Children, Baron de Constant Robegue Mr. J. Kellie, Mr. R. K. Dick, D. Kennedy, W. R. Talbot, T. Fox, Manockjee Cursetjee, Mr. McMicking, W. Wallace, Lieut. Halsworth, Lieut. Dickinson, Lieut. Simmons, Mrs. Bonny and Child, Lieut. Kemp, Capt. Houston, Lieut. Ponsonby, C. B. Burns Esq. C. R. Buller Esq. Sir W. McGregor Bart, Lieut. H. Creed, Mr. A. Cowen, Lieut. Strachan, Gordon and Stewart, Mr. A. G. Dallas, Mr. G. Bryant, J. H. Astell Esq. Mr. J. Little, G. Astell Esq. 1 European and 4 Native Servants,

Shipping in the Harbour.

R. I. C. VESSELS.	E. I. C. STEAMERS.
Receiving Ship Hastings.	Satellite.
SCHOONERS	Indus.
Taptee.	Auckland.
Royal Tiger.	Cleopatra.
BRIG.	Zenobia.
Palinurus.	Hugh Lindsay.

Merchant Vessels.

ENGLISH.

Charles Grant.	British Merchant.
Hugh Walker.	Hope.
Thomas Coutts.	Simon Taylor.
Sir Edward Paget,	Champion.
Urania.	Chieftain.
Earl of Balcarras.	Wave.
Reliance.	Lancaster.
COUNTRY.	
Cauderbux.	Rattler.
Pittamber Savoy,	Corsair.
Caroline.	Mary Gordon.
Colonel Newal.	Hindostan.
Essavie.	Bombay Castle.
Maria.	Arab.
Ruby.	Drongan.
Fanny,	Roopaulay.
Hydroose.	Yatch Prince Rigent.
Alexander Robertson	Asia.
Ruparell.	Amoody.
Hamoody.	Dawlut Savoy.
Nassry (Imaum of Muscat	Agnes.
Caroline (Do,)	Wild Irish Girl.
Sophia.	Malik-ool-Bahr.
Cady Grant.	Cursetjee Cawasjee.
FRENCH.	PORTUGUESE.
LaAdele.	Brig (War) Cassador Africano.
Josephine.	
ARAB.	Barque Marquis of Hastings.
Harsingar.	Brig Simplicia.
Lodense.	
Hamoushaw.	
Shawen Shaw.	
Fezrabany..	

Military Arrivals and Departures.

ARRIVALS.

March 1st—Asst. Surg. H. Hadley, H. M. 40th Regt., from Upper Scinde.
do. do. Capt. Erskine, P. A. H., from Seeroor.
do. do. Surgeon Cahill, 2d E. Regt., from Dadur.

DEPARTURES.

March 1st.—Lieut. Pononby, 22d Regt. N. I., to England.
do. do. Lieut. and Adjt. Simmons 2d Queen's Royals to England.
do. do. Lieut. Holdsworth, to do.
do. do. Lieut. Dickinson, do. do.

FROM THE BOMBAY GAZETTE OVERLAND DISPATCH, MARCH 1.

SUMMARY OF INTELLIGENCE.

THE Principal item of News for the past Month is the state of our affairs in China. The departure of Admiral Elliot seems to have been the first instalment of good, and from that time there has been a glimmering of light on our political horizon. The taking of the two ports of Chuenpee and Ty-kocktow has taught the Chinese that we are in earnest, and the arrival of the *Enterprize* Steamer in Calcutta brings us the important intelligence that Peace has been agreed on between Keshen and Captain Elliot on the 20th of January, and that four stipulations have been agreed to which are announced in a Circular of that date from the Plenipotentiary to Her Britannic Majesty's Subjects in China.

Now at a first glance we should be disposed to congratulate our Countrymen on the event, but a more mature consideration of the Circular "*must give us pause.*" The cession of the Island of Hong Kong which is the first stipulation would be valuable if the possession was not clogged with conditions "that the same duties as at Whampoa "are to be paid there." This takes from its independence and although the Harbour is represented as fine and the facilities for Commerce great, yet without the inducement of favorable duties from all we can glean, Hong Kong will be but at best little more than a Military Post from which we can behold and overawe the truculent Fokies. The 2nd Article the indemnity of Six Millions of Dollars, however is that with which we find the most fault, it is neither satisfactory nor consolatory to the Mercantile World, while it inflicts severe loss if not ruin on many of those concerned in the Opium Trade. There is only one consolation for the Merchants, and that is that China having once conceded the necessity of paying some part of the English Expences, the English Government must see the justice of paying up the Opium Bonds and rescuing the honor and plighted faith of Elliot from the imputations which now restone it. But how will the Chinese pay the Six Millions? No doubt by levying additional Duties and thus the English in the end will have to pay themselves. Besides the time given for payment is preposterous, Six Years interest at 9 per Cent will double the principal, and after all there is no mention made whether the Six Millions is to be considered as a payment to the British Government for the expences of the Expedition, or whether it is intended as a compensation for the destroyed Opium or what it is for? The Third Article of direct Official intercourse between the Two Countries upon an equal footing promises well, if it means that we are to have *direct intercourse* with the *Court of Pekin* and the residence of an acknowledged Ambassador, and that we are not again to be left to the caprices of an Imperial Commissioner. The 4th Stipulation relates to the time of the reopening of the Trade which is to commence Ten days after the China New Year and to be carried on protempore at Whampoa till further arrangements are practicable at the new settlement. *Details* remain matter of negotiation. "*Aye there's the rub*" and we fear that Captain Elliot's passion for diplomatizing will yet be felt in the loss of many advantages and we should not be surprized yet if in the arrangement of the said Details fresh matter of offence should arise. Keshen's order to the Kenminfoo in Macao is sufficiently arrogant, and his announcement that the English Barbarians are now obedient to orders &c. shew what colour he will give to affairs to the Imperial Court. "The grand object of the Expedition was understood to be to insist on "reparation for indignities offered to the British Empire in the person of its representative and the detention and "menacing of British subjects" and the Opium question formed no part of the dispute. Now in the four Articles we have recited, we do not see that any sufficient reparation has been offered, and the Imperial Commissioner's Official order to the Kenminfoo of Macao above alluded to, shews that the Chinese authorities are as much disposed as ever to be arrogant to the British, for Keshen says, we have invoked him to beg the imperial favour for us after having restored Tinghae and Shakeo. The fact is our whole Policy since the commencement of the Expedition has been too kind and conciliatory, and we predict that the present pacification without great modificat ons will be neither satisfactory nor durable.

The next item of News of the Month is the state of parties in the Punjaub. Shere Singh with the assistance of the Army and the French and Italian Officers has succeeded in driving the Widow of Khurruck Singh from the Gadee and seating himself thereon. The Lady has it is said made offers to our envoy of payment to the British Government of so much in the rupee, if we would consent to aid her in placing the expected offspring of Now-Nehal-Singh on the Throne. The Widow of Now-Nehal-Sing is far advanced in pregnancy, and her child will undoubtedly be the lineal descendant of Runjeet Singh whom we are bound by Treaties to support. The part which the Government of India will take seems yet undecided, but the gathering of Troops on the frontier and the tone of the Calcutta Press would indicate the contemplation of an armed interference.

The last accounts from Scinde represent that matters are progressing satisfactorily there, and that the Hill Tribes were all entering into Treaties with us. Nusseer Khan had not surrendered as was reported and generally believed in Bombay when our last Overl and Dispatch was sent, he is now said to have gone to Khelat to give himself up to Colonel Stacey of the Bengal Army, he having no confidence in Mr. Ross Bell. The Army under General Brooks was encamped near Baugh when we last heard from it. It was also reported in Camp on the 7th of February, that the Field Force would probably break up and the 5th Bombay N. I., a wing of H. M. 41st and some Artillery had received Orders to proceed down the River, but since then another report says all are to stand fast on account of the disturbances in the Punjaub.

In Affghanistan all is tolerably quiet for such a convulsed country, some disturbances took place near Candahar at a place called Ghirisk and a body of 12 or 1500 Rebels got together with 2 Guns, they were however quickly defeated by a Field Detachment under Captain Farrington who took their Standard and Guns. An expedition is talked of to Nijrow about the middle of the year to make the refractory Chiefs pay tribute to Shah Soojah, the Chiefs on the Toorkistan frontier have always been troublesome and much difficulty may be expected in their settlement. In the Southern Marhatta country the Fort of Nepanee is being besieged by a force from Belgaum under Major Vivian. The last intelligence was that an outwork had been taken and 3 Guns, and the enemy about 500 strong forced back into the Fort which was being shelled, but hitherto the rebels had not given in. We have since heard the place is taken with a loss of 6 killed and 18 wounded.

From Persia we have little intelligence, Ally Shah will, it is reported soon take the field and strike a blow for the Persian Crown, he will be joined by many of the Tribes and have the whole influence of the Priesthood of Persia exerted in his favour. Russia it is said will send Troops to the aid of the Shah.

We have no news from the Nepaul Frontier all seems to be quiet there and the Burmese are also tranquil.

In Bombay we have had Public Meetings and Addresses &c. to the Hon'ble Mr. Farish and the Chief Justice Sir J. W. Awdry on their final departure from India for their Native Land. We have also had a gay party at the Government House in honor of the birth of the Princess Royal when Sir James Carnac and Family returned from Baroda about the middle of the month and it is understood that his presence at the Court of the Guicowar has facilitated an arrangement of all the disputes which have so long existed between that State and the Bombay Government. The Races were conducted with great spirit and afforded excellent sport. The weather in Bombay is becoming excessively sultry and many parties are preparing for a flight to the Mahubleshwar Hills.

AHMEDABAD RACES, 1841.

FOURTH DAY, 16TH FEBRUARY.

FIRST RACE.—The Winners Plate of 300 Rs. from the Fund and 4 Gold Mohurs Subscription for all winning Horses of the Meeting, to be handicapped by the Stewards, 2 miles.

	stone	lbs.	
Major Robert's Alfred.....	9	7	1
Do. do. Shylock.....	9	4	drawn.
Do. do. Mango.....	9	4	drawn.
Mr. Boyd's Kamrun.....	9	4	drawn.
The Captain's Barrister.....	8	7	2

Time 4m. 13s.

SECOND RACE.—The Pony Plate of 100 Rs. from the Fund and one Gold Mohur Subscription for all Ponies 12 hands, 3 inches and under, half mile Heats catch weights.

Mr. Drinkwater's.....	C. P.	Little Richard...1 1
The Captain's.....	C. P.	Orson.....2 2
Mr. Nixon's.....	Whitefoot	.....ditto.

J. W.—*Secretary.*

"Nothing extenuate, nor set down aught in Malice.'

THE GAZETTE.

Wednesday, March 3, 1841.

ARRIVED March 2nd, French Brig *Josephine*, J. Gieck, Master, from Bordeaux 4th October and Mahi 21st February.

THE number of Covers despatched by the Steamer *Victoria*, was 25,061.

THE Hon'ble MR. FARISH and Sir J. W. Awdry embarked on board the Steamer *Victoria* on Monday evening under the usual salutes, many friends of both attended them on board, and we believe if kind feelings may prevail, both carry the general good wishes of Society with them for a safe arrival in their Native Land. We do not think there is any good taste in again alluding to the late public Meetings, we all of us have deep rooted opinions and prejudices which we neither like to be assailed or impugned by our fellow men. Sir John Awdry was esteemed by all who knew him and particularly by the Bar with whom he was in daily contact. With regard to the other Honb'le Gentleman we are sure that he will take with him the gratitude of many, while if any bad feelings are engendered against him we may surely say that they will never be reciprocated in the breast of so pious, humble and just a man as Mr. Farish.

WE are enabled to announce positively that SIR JAMES CARNAC does not proceed to England in the *Thomas Coutts* as stated in the columns of the *United Service Gazette* and from all we hear, we trust the services of the Governor will be continued to the Presidency for some time to come, as we are truly happy to learn that his health is much improved of late, and that a journey to the Mahableshwar or Neilgherry Hills will probably be the extent of His Excellency's journeys for the present.

WE have heard again from Nepawnee from our old friend "PADDY BISCUIT" it appears "that 400 Prisoners were taken, but many made their escape from a Sally Port on the East of the Fort which was on the opposite side to our Camp. The Walls of the Fort are about 40 feet high yet they only just peep above the glacis which is very much raised, they are of great thickness and strength being built of stone and chunam. The ditch in most parts has 10 or 12 feet water and in others it is even as deep as 20 feet. In fact every one was astonished at its strength when we gained admittance. If the Garrison had not surrendered we were to have blown the gate open with a nine pounder and stormed the place. Had we done so, it is now thought that our loss would have been very great, and half our force cut off, if we were not finally repulsed. The Fort was so crowded with the enemy that every shell told, and not a man could raise his head above the parapet who was not immediately picked off. The Garrison it appears were divided among themselves which hastened the surrender, and accounts for our so speedily gaining possession of so strong a place. The Prisoners have been marched off to Belgaum and Rutnagherry. We sincerely hope this severe example will have the effect of shewing the Jaghiredars and their blustering and unmanageable followers the futility of raising disputes with the British Government, while we trust it may deter their simple retainers from following their infatuated Masters to the field, and wasting their lives in unprofitable and despairing struggles for a return to the old order of misrule which we may safely predict has "departed never to return."

THE right of the temporary command of the Madras Army on the death of Sir S. Whittingham has caused a little discussion, in the papers of that Presidency. One of the Fane General Officers, Major General Allen, a Queen's Officer who is in command of a Brigade and is only a local Major General was appointed, although a Company's Officer Major General Woulfe who was in Command of a Division at the time, and is a regular Major General (not a local) was passed over. It is said the Adjutant General and Military Secretary at Madras both supported this nomination in the teeth of the interests of their own service!!! We fully coincide with the view of the case taken by the Calcutta *Englishman* of the 18th of February and do trust that the Company's Officers will take the matter up as one of precedent, if not they may yet have to rue it on another occasion. It is a matter of sufficient disgust to the service of the Honorable Company, that no one of their body is ever selected to command the English Armies in the East, and we think it a glaring neglect and slight upon them, and are only surprized that the Court of Directors at home, some of whom have been in the service themselves, do not stipulate that one at least of the three Armies should alternately be favored with the Command of one of its own Officers. The Officers of H. M. Service have at all times done their duty well, but still they have not spent their lives in this country, nor devoted their best energies from their youth upwards to the Army of which they have formed a part as many of the old Company's Officers have done, We think that Major General Woulfe has been passed over unjustly, and are sure he will confer a benefit on the Armies of India by not suffering his supercession in silence.

THE Calcutta *Englishman* of the 18th of February has found out, what we were not aware of before, that the report of the Commission on the affair of the Pass of Nafoosk under Major Clibborn first found its way into "THE BOMBAY GAZETTE." The article in question, (for we cannot call it a report seeing that it has never been confirmed by any authority or published in any official way) appeared in the Bombay *Courier*, and we believe since its appearance no article has excited so much comment or drawn forth so many remarks from the Indian Press. In common with the correspondent of the *Englishman* we hear the commission is ordered to re-assemble to reconsider its proceedings. Now this is a measure of little utility without further evidence is adduced, as no body of officers who have a regard for their character for consistency, will in the mere fiat of a controulling authority so entirely change their views of a subject as to turn censure into praise, and as the late Marquis of Londonderry once felicitously said "*Turn their backs on themselves.*" The utmost which can be obtained by the measure of a revisal (without as we before said more evidence) is that the commission should pay attention to the objects urged on their consideration, and if any circumstances arise to cause an alteration of sentiment to state them fully and firmly. It is of no use now to say that what appeared in the Bombay *Courier* was not the Paper which was intended to be forwarded officially to Government, and we believe that no one attempts to doubt its authenticity, that it is to be deplored that it found its way to the Press in the premature way it has we fully agree. Had it shared the fate of all official Papers and been announced in due form through the usual channels no one could have cavilled at the matter. As it is every one can and has a right to find fault, and even the Members of the Committee themselves have some cause to complain. The Government of Bombay has shewn its sense of the affair, and by promulgating a complimentary order to Major Clibborn and the Detachment, evidently shewed that the alledged report of the Commission weighed not in influencing its disposition to praise where its subordinates condemn. For our own parts we are fully of opinion that the Detachment, the Commanding Officer and all his Band behaved most gallantly, and succumbed merely to the force of circumstances, a check certainly occurred but it could scarcely be called a defect, while in its effects it had nearly all the consequences of a Victory. From that time affairs have worn a better aspect in Scinde, for the determination of the detachment at Nufoosk under every afflictive circumstance in which men and Soldiers could be placed, still caused the enemy so much loss and evinced such enduring gallantry as gained the respect of the wild Tribes and induced them finally to come to terms.

The praise of General Brooks at the expence of the Departments under him we take to be a little bit of irony of our Calcutta Brothers, and the story of 800 men without arms and the Guns without serviceable traces seems a little hard of belief. We were not aware of *any snappishness existing between General Brooks and his Government.* Nor do we put faith in any such reports although we know that much jealousy has existed about the probability of collision between General Nott and General Brooks with regard to their respective commands which might cause the acts of General Brooks to be misrepresented. All we can say is that we fully agree with the *Englishman's* correspondent, that he is a clear headed man and a good Soldier, and young and active enough to prosecute any service to a favorable issue to which circumstances might call him.

A report is again rife that the Force under General Brook's will proceed to Herat as Kamran is said to be tampering with the Persians, and if the intelligence we published in our last issue be true, the British and Persian Forces may essay a trial of strength for (we believe) the first time, as we are not aware of any previous wars waged between the two Powers. Whether such a collision will bring Russia into the field against us remains to be seen. It is well known that Russian influence is paramount at the Court of the Shah and in the former advance on Herat, the Russian Ambassador was with the Persian Army. Herat is the Key to Affghanistan and if Kamran cannot controul his Wuzeer who seems to owe us a grudge, it would be better that Herat and its dependencies should be annexed at once to the Dooranee Empire, we could then maintain a Garrison there, and keep our Ally's newly adjusted empire from foreign invasion. There is no doubt the intrusive King whom we have forced on the Affghans will always be a source of great expence and trouble to us. The Musselmaun population are always mortal haters of the Nazarenes as they jeeringly call us, and we believe bigotry reigns no where with more unlimited severity than in the Affghan Country, our Ally will we again say yet cost us dear, but we have no choice, we have like Nebuchudnezzar set up an idol, and we must make the world bow down to it, or acknowledge at once our rapacity of conquest and our inability to maintain it.

AT this time of the month an Editor feels rather queer, as to the subject of news to tender to the public. The intelligence received by the last Overland is entirely worn out. China question is, to all appearances, finally settled. Scinde and Affghanistan are almost quiet. Aden and the Persian Gulf without any fresh rumours of War, and only a threatened seige of Herat hovers over the tranquil Political horizon, ths public are naturally crying out for the want of Editorial, and how can we help it when there is nothing to write about? In this dull monotonous place Bombay, nothing will be stirring for us Editors. The, Press is left to its own resources. No Extra Intelligence, no employment of our own Couriers, no rise or fall in the funds to cause an excitement in the city, no railroad accident, no Police reports, no Legislative Meetings, no Trials and in fact, no nothing, save and except Bombay as it is, as it has been and we are afraid as it always will be, far inferior and long behind in comparison, to the city of Palaces. With a Steam Flotilla equalling that of any Packet station, and far surpassing many of them, Bombay, when news can be received from England in a period of thirty seven days, remains still in its slothful state, and nought but public spirit and enterprize can change it. The inhabitants, one would think are totally insensible to the rising importance of the Presidency, and an influx of European population alone will ever be the means of raising this city, to the wealth and prosperity it deserves. Although the Scindian campaign has opened resources, although Aden and Kurrack have presented themselves as fresh ports for Trade, still the spirit of emulation is wanting, and capital, that which is come-at-able is far, far behind hand in coming forward to support or increase the Commercial prosperity of our Island. If we could only persuade the Persians and Arabs to eat Opium, lots of speculators would enter the Market, and the drug would be at a premium, but when Wooleus, Madapollams and only Cotton Goods are concerned, it is not a sufficient inducement to our wealthy Cits to open their purses or extend their traffic. Give them the opportunity of a chance of gaining one hundred per cent, and to China or elsewhere their shipments *will increase* but nothing less will suit them. The Ghost or Heirs of Runjeet Sing may send boat loads of Cashmeree Shawls, Silks and Specie from the Punjaub, but it will be of no avail, save and except an immense profit is likely to be realised by the Traffic. In this instance we allude more particularly to the rich Parsee and Hindoo Houses. A public spirit is wanting amongst them and until such is aroused, Bombay will remain, as far as its trade is concerned the dull spiritless monotonous place that it is.

THE *United Service Gazette* in some comments on an article of our's says, that we stated that "the inhabitants of Bombay are not clean public sprited or fond, of improvement." We need scarcely say we intended the bulk of the Native population, the *Citizens*, not the Anglo Indian Denizens.—We rather think every street and alley of the black Town will bear out our statement. We are sorry that our care for the Public Health should be offensive in detail to the delicacy of that Journal, but however unpleasant the task we shall still continue to point out and reprehend Public nuisances, and especially such as are likely to endanger the sanitory state of the Public, whether we please our contemporaries or not.

WE give a report in a Supplement of the proceedings in the Supreme Court of Bombay regarding the will of the late Doctor DAVID FORBES at the request of Messrs. FORBES AND CO. of Bombay. The proceedings are so long that we leave them to the judgment of the public for the present without comment.

CHINA.

We have received a number of the *Chinese Repository*, published early in January, which continues its monthly Journal of Occurrences, up to the declaration of the Armistice on the 8th ultimo. From this journal we extract the following "Memoranda," of what *were* to have been, and *ought* to have been, our demands upon the Chinese:—

3. "*The nature of demands of the Chinese*, made by the British government, may be "guessed at," from two following memoranda: the first is from the New York Journal of Commerce, for June, 1840, "furnished from a source entitled to much consideration;" the second is a native friend, early in the present month.

FIRST MEMORANDUM.

Demands of Great Britain against China.—The following has been furnished us from a source entitled to much consideration, as a catalogue of the demands which Great Britain will make on the government of China.

1st.—An apology for the imprisonment of H. B. M. chief superintendent of British trade, and of the British subjects at Canton, by order of the imperial commissioner.

2d.—Indemnification for the opium surrendered by the chief superintendent of the imperial commissioner, and likewise to the merchants, for losses sustained by them, and for the outfit and expences of H. B. M.'s expedition against China.

3d.—Acknowledgement of the debts owing by the cohong to British merchants, and security for the punctual payment of them.

4th.—An imperial edict establishing a fixed tariff of import and export duties.

5th.—Petitions to be permitted to be made, and forwarded direct, sealed, to the imperial government at Peking.

6th.—An envoy to reside at Peking, and superintendents of trade, at all the ports open to H. B. M.'s shipping and commerce.

7th.—The legal trade to continue, and not to be interrupted, in consequence of any smuggling transactions at Canton, or on the east coast of China.

The above are understood to be the unconditional demands made by the government of Great Britain upon the government of China. Failing to obtain them, force is to be employed, until recognized by the emperor of China. The following demands will it is understood, be likewise articles above mentioned.

1st.—An imperial edict for the opening of some half dozen or more ports on the east coast of China to British commerce.

2d.—A repeal of the hong monopoly, if practicable; if not, an additional increase of hong merchants.

3d.—British subjects to be allowed, with their families, to settle in any port open for trade, and to visit any part of the empire, first obtaining for this purpose, a passport from the British superintendent of trade.

4th.—Permission to build a church in each of the ports open to trade.

5th.—A port or an island, in which Great Britain may exercise exclusive jurisdiction.

6th.—All crimes committed by British subjects shall be adjudged by a court appointed to this effect by the crown of Great Britain.

7th.—Reduction of the present exorbitant port-charges on vessels.

SECOND MEMORANDUM.

1st.—It is to be required of the Chinese, that they acknowledge, and make due apology for, the insults and injury done to British subjects:

2d.—That the Chinese pay for the opium, liquidate the debts of the hong-merchants, and defray the expences of the present expedition;

3d.—That the Chinese court give security for all monies due to foreigners:

4th.—That they establish a fixed tariff on all goods, both import and export:

5th.—That liberty be granted, in cases of difficulty, to address sealed communications to his majesty, instead of submitting them to local officers:

6th.—That a foreign officer reside at Peking, and one at each of the ports opened for foreign commerce:

7th.—That the merchants and commerce in the ports shall not be involved (or prejudiced) by smuggling on the coasts:

8th.—That for the extension of commerce with foreigners six ports shall be opened:

9th.—That the system of hong merchants be abolished; or if not that no additions be made to the present number of the cochong:

10th.—That at all the ports, where the foreigners reside, churches or chapels may be erected:

11th.—That at all the ports, opened for commerce, families be allowed to reside.

12th.—That at all the places of residence similar privileges shall be granted as are enjoyed at Macco.

14th.—That whenever foreigners are guilty of offences against the laws, they shall be tried by foreign magistrates:

14.—That there be a reduction of the duties both on foriegn merchandise and shipping.

If this second memorandum has not been translated from the first (we suspect that it has, though assured to the contrary by tolerably good native authority,) the demands on the Chinese are greater than we ever supposed they would have been. Ere long we shall see how far they are true and with what success they are urged.

And now we *have* seen to what extent the above demands have been insisted upon! Verily, a miserable skeleton presents itself in place of a solid treaty. Where be the apologies and indemnifications claimed some twelve months ago. The apologies are not forthcoming, and the six millions of dollars will scarcely pay the expenses of the Expedition. The balance for the Opium merchants will be a minus quantity, this time—and, the "direct official communication, which we are promised, is just whatever the Chinese please!—The Hong system remains where it was, and our rights and privileges not extended a jot. Falstaff's men in buckram did not dwindle down so ludicrously, as the above Memoranda have dwindled down into Capt. Elliott's notable treaty!—*Hurkaru, February* 18.

NORTH WEST PROVINCES.

DELHI GAZETTE, FEBRUARY 17.

Although we have letters from our various Correspondents in Affghanistan, the Punjaub and Scinde, we cannot gather much of stirring interest and are obliged to make the same beggarly account of nowtless columns as most of our Cotemporaries have during the past week; however as there is really nothing a-doing we must content to wait a while, and thank our friends for their remembrance of us, proving as it does that when any thing is a-stir we shall promptly receive it. Even from the Punjaub where, as one of our Calcutta Cotemporaries expressed it, we and our Agra brother were, at least, to have found full employment for a Month, and to which Territory we still look for food, all is (for the present only) settling down into quietness and a letter mentions that there can be no doubt of the popularity of Shere Sing both with the Native population of Lahore, the Army and the European Officers in the service, we do not hear any thing of the approaching royal accouchement, and if it take place at all, but little fear is entertained of a struggle for power after the defeat the Dowager has already met with; Dyan Sing at his elbow, the Monarch will, as we have before said, hold on to the allies of a father who disowned him and it is not improbable that the commencement of our supremacy, in the Punjaub, still far off, will date itself from the day we assist our *Protege*, which we take it. Shere Sing has now become, to bring the different Chiefs, rebelling against his power, to subjection, they may however see the necessity of succumbing without allowing us to interfere, and neither party will permit us if it can help itself, it is however curious to see such sticklers for legitimacy, as English Governments generally are, upholding a reputed illegitimate which we argue ours will do, so long as be and his Ministers behave themselves; it is however good policy on both sides and will no doubt conduce in the long run to the advantage of both; much plotting has been and is still going on the side of the Amazon, the old lady has been titled, and some of her emissaries, who presumed to carry their practices to Loodianah, were quickly sent home again, it is evidently the policy of our Government, from all we can hear, to support the present occupant of the guddee, and though a passage of arms is not likely to ensue at present unless as aiding our *Ally*, diplomacy will acquire the control, at least we hope so which it is absolutely necessary we should have in the Lahore Court, the *premier pas* has been made to that influence and hitherto it has cost us nothing.

From Cabul every thing is interesting, small though the news may be; a certain Brigadier lately arrived in its vicinity has certainly gained no *golden* but plenty of another kind of opinions from both Officers and men under his control, and some talk there is of symptoms of regret that some one else had not the command, the 13th N. I. were not, 'tis said, allowed to bring their Mess Stores with them, a degree of consideration which must assuredly produce the most grateful feelings from the officers of that detachment and has, no doubt. There was something very reasonable also in sending on two of Captain Nicholl's guns without carriage for the men's baggage or even for their food and bedding, a kind of mutiny was the consequence, the guns were not at all necessary. However as the complaint is general of the worthy Brigadier's mode of acting from all sides, not even excepting politicals, for he nearly threw all Lahore into a blaze on his passage, we suppose some enquiry will be made into it. We are in possession of certain doings at the hospitable mansion of General Avitabili who entertains his guests so well, that every day increases their love for him, but we will not, upon the principle of not being scandal mongers, repeat them, suffice it to say that the company were all very edified and most assuredly amused at the *gallantry* of a very gallant officer. A little bit of a fracas has been got up in Cabul originating in the anxiety of Colonel Mackoul to obtain the command of a Brigade, the letter almost demanding such a command, was, we hear, not sent through the Staff but direct to General Sale, whose authority to grant such a request may be questioned whilst General Nott commanded in Affghanistan, it was however convinced in rather dictatorial terms, and of course, did not please either General Sale or Brigadier Dennie; it is rumoured that these really nominal Brigades are to be broken up and no further confusion on this score will then occur.

From Ghuzni we have scarcely any but sporting news every one bearing his banishment with a coolness only surpassed by that of the splendid weather he enjoys: shooting and skaiting amuse the Officers, and the sepoys are upon the Ice the whole day, they cut figures some times as may well be imagined, every one healthy and only 10 out of 700 men of the 16th in Hospital, a friend remarks that the sepoys have increased in strength and size most wonderfully since they left Hindoostan, they have now had a long *spell* and ought to be speedily relieved, the climate is dry and agrees equally with European or sepoy, the Jacks are however allowed to take plenty of exercise, not 60 men being on duty at a time, no useless parades, (a hint for General Sale) Atta 25 seers, and Barley upon which the horses are fed, 40 seers for the Rupee. European supplies are the only things required, and we wonder no European or Parsee has yet tried his fortune there, however Government do not give much encouragement to such enterprizes and without their particular protection no merchant will try their luck. All is quiet in the district and shooting parties who wander securely without tent or baggage or guard some 30 or 40 miles from Ghuzni consider themselves in perfect security among the chiefs of the Hazareh mountains, we sincerely hope this security may not prove unfounded, but sufficient for the day is the evil thereof and as the chiefs seem inclined to seek the intimacy of our countrymen and treat them with the greatest hospitality and civility, while hundreds of their followers beat up the whole district and drive down from their haunts the wild sheep, deer, and goats of the mountains, our sporting countrymen, whose letters we have seen, feel loath to leave so attractive an amusement. The Chiefs of these mountains, a range which extends to the Ghiljie country and to the N. W. of Ghuznie are described as living in very good style, very good one in particular by name Kujjub Khan, as entertaining his adventurous guests in a courteous and most hospitable manner. Our letters from Ghuznie, are to the 23d ultimo, at which date no snow had fallen.

From Scinde our letters are dated Lheree 2d February, every thing going on very quietly, Mr. Bell with the good faith attributed to him, doing much to conciliate the tribes, and every dispute bears the prospect of being amicably settled. There have been some Court Martials, things that will happen in the best regulated Armies, and we are promised some particulars anent them. Mr. Bell and suite were at Lheree on the 2d instant, but from what we gather, it appears doubtful, whether Nusser Khan has come in or not.

This is all we have been able to glean from our letters up to our press hour, and in the present dearth of news any thing is welcome, especially when there is

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little to expatiate upon beyond the neglect of the Magistracy of the Upper Provinces, and the disgraceful state of the police, themes that must much interest our general readers; however, we mean to devote a whole column to these matters shortly, for our Calcutta brethren may assure themselves that if *they* are badly off in police matters, *we* are ten times worse, we speak *feelingly*.

We had hardly concluded the above, when a note from the Post Masters has again made us smart. It appears from the annexed account brought by the Meerut dawk runner that the Thanadar of Shahaderah informed him that the Calcutta Banghy, which left on Monday evening, was plundered at about five miles beyond Shaha-derah or ten miles from Delhi, we lament to hear, that the Burkundauze who accompanied the bearer for the purpose of protection is said to be murdered, and the bearer wounded. A pretty state of police certainly. The following is the list of packages dispatched, we hope our companions in misfortune took, as we did, the precaution of insuring themselves.

List of Number of Parcels dispatched per Banghy from the Delhi Post Office to the Allyghur Post Office, on the 15th February, 1841, at 5½ P. M.

From whom.	To whose address.	For what Station.	No. of Parcels.	Sicca Weight.	Remarks.
Delhi Press.	Thos. Place, Esq....	Calcutta.	1	73	Bg.
Lieut. Coke.	Lieut. Huish.	Cawnpore	1	34	Bg.
Loodhiana..	Messrs. Becher Chapman and Co.....	Calcutta.	1	33	P.P
	Total Parcels....		3		

POST MASTER

Delhi Post Office, 16th February, 1841.

Letters from the Westward mention that in consequence of a disturbance having taken place in Serohi, Major Downing had detached a Wing of the Judpore Legion, under Captain Stubb's command, from Judpore, to suppress it.

We learn that the Shekawattee Brigade, under the Command of Major Foster, is to be reviewed by the Brigadier commanding the Rajpootana Field Force, who has been ordered up to Jhoonjnoo, from Nusseerabad, for that purpose, and from the known zeal and ability of the gallant Major, we are sure, the Brigade will be found in a high state of efficiency.

PUBLIC ROADS.—It is not perhaps generally known, that simultaneously with the settlement of the N. W. Provinces, the Govt. had ordered the levy of one per cent on the revenue assessed on land for the formation of a general Road Fund, that the sum so raised having accumulated to a considerable amount, is forthwith to be appropriated under European Superintendents to the construction of roads between all the principal commercial towns. In the Delhi district in particular, where, through the exertions of our active Magistrate, who, however is not a very good road maker though he does look after the revenue, an accession of between 30 and 40 thousand rupees per annum is made to the Fund in question, from the *Ferry* collections, we may anticipate very important results in this branch of public improvements.

It is rumoured that Soonput, owing to its great distance from Kurnool the Sudder Station of the Local Officer, and to its proximity to Delhi, the revenue jurisdiction of which is very limited, is to be added to the district of Delhi. This arrangement appears very desirable, the Southern extremity of Soonput being 70 miles from Kurnaul, and only 16 from Delhi.

DELHI.—The review of the 46th N. I. went off with very great eclat last Wednesday morning and many were the compliments paid by Major General Sir E. K. Williams to Major Girdlestone on the great efficiency, and general soldierlike appearance of the regiment under his command. The officers entertained the General in the evening of the same day when the whole of the officers and gentlemen of the station filled their splendid mess room, the dinner was, as usual, excellent and a few well sung songs made the evening go off most brilliantly. The Brigade of the three corps of Native Infantry, the Sappers and Miners and Artillery on Thursday was also very satisfactory.

The Engineers and Artillery Ball came off on Friday evening and was a most *recherche* affair, the assembly rooms were filled, we are told, for severe indisposition prevented our attendance, with all the beauty Delhi can command, the novel and excellent arrangements of the excellent supper were much praised. Waltzing was kept up with more than usual spirit and the ladies seemed unwilling to leave, even at three o'clock, some choice spirits remained to second supper.

Sir E. K. Williams left on Saturday evening but without his aide de camp Lieut. Elmhirst, who, we regret to say, is detained at Delhi from the effects of a severe attack of cholera.

Colonel Maddock had a large party to meet Sir E. K. Williams on Thursday last, and Colonel Oliver gives the station a quadrille party this evening.

The treasure party from the 46th N. I. commanded by Captain Burt of that Regiment returned to this station from Allyghur on the 15th instant with 11,95,000 rupees, remittances from the Agra, Muttra, Allyghur, and Budaoon Collectorsihps. Captain Sturt 10th N. I. left this morning for the Northward in command of a treasure party conveying fourteen lacks of gold and fifteen Lacks of silver for transmission to Affghanistan. When shall we hear of any thing coming back again?

AGRA UKHBAR, FEBRUARY 20.

AGRA.—Our "gay season" set in most favoursbly on the evening of the 18th instant, by a dinner and evening party at the Lieutenant-Governor's. Upwards of sixty guests sat down to the former, while at the latter the numbers could only be counted by so many to the square yard. The rooms crowded with fair women and gallant as well as peaceable gentlemen; the variety of costumes—some peculiarity rich and tasteful—and the general animation inspired by the happiness of the hour and some excellent Champagne, all combined to form a perfect tableau of Gaiety. At a late hour this very agreeable party broke up. Some guests we were sorry to hear, lost their share in the evening's pleasures, in consequence of having been supplied by the proprietor of the Horse Mart with a horse—to borrow a phrase from the Small Coal Man's well known and beautiful ode to his Donkey—"as wouldn't go." The rule laid down by the Small Coal Man for procuring progression in Donkeys particularly, and animals generally, was, we believe, strictly followed, but to no purpose.

The evening party by the General, the Staff and the Officers of Native Corps at Agra, will take place on Tuesday the 23rd, instead of Wednesday the 24th.

CALCUTTA.

MAJOR HENDERSON.

(*From the Oriental Observer, Feb.* 13.)

During the past week, the retirement of Major H. B. Henderson, the Deputy Military Auditor General, has been announced. He quits the army, we understand, to become a member of the firm of Carr, Tagore and Co.

Considering the character which Major Henderson has borne, since his first appointment to the staff of the Bengal Army, we are somewhat surprised that his retirement has been announced, unaccompanied by a tribute to his merit from our daily contemporaries. Major Henderson has, from the earliest period of his career, been known for his successful pursuit of literature and the fine arts. His exceeding good taste, and the purity of his style of composition, early attracted the attention of his contemporaries; and, if we mistake not, recommended him to the notice of the late Marquis of Hastings who at once took him by the hand and placed him upon the staff. Since then he has been distinguished by his zealous discharge of his public duties, and by his solicitude for the honor and interests of the army. Though no ostentation has characterised his labors, we are aware that he has lost no opportunity of furthering the welfare of his brother officers. To his unremitting devotion to the subject we may ascribe the successful awakening the army to a sense of the value of a Retiting Fund,—and to his more recent labors must be attributed the detection of the frauds practised upon the Military Fund, and the establishment of a system of check which must effectually protect the institution from future embezzlements. In his capacity of Deputy (and for a considerable time Principal) Military Auditor General, Major Henderson has been remarkable for dispatch of business, great accuracy, and—to all officers and others who had business with him—extreme courtesy. His known abilities have caused him to be also frequently consulted by his professional brethren on questions of difficulty, having no reference to his immediate office, and we do not know of a single instance in which his counsel has been sought with disadvantage or afforded with unwillingness.—He carries into his retirement the grateful recollections of a large circle of military friends and admirers, to which he will permit us to add the good wishes of the humble individual who pens this article, and who is infinitely his debtor for an arrear of kindnesses and friendly assistance.

The successors to Major Henderson in the Audit Office and Secretaryship to the Military Fund, have not been named. It is supposed that Captain Roxburgh will be appointed to the former;—Major Hough and Captain Brittridge are candidates for the latter.

ENGLISHMAN, FEBRUARY 15.

The general court martial being now finally ordered to assemble on the 16th instant, and we being most anxious that it should be conducted in all respects according to law,—an anxiety which we may safely take for granted the Commander-in-chief feels as strongly as even the parties to it can do,—deferentially beg to submit to the proper authority the following point, connected, indeed, corporated in the legislative rules by which these courts must be guided. In the original order for the assembly, and also in the one which postpones the meeting, the Commander in chief has named the *hour* at which the proceedings are to commence; but we submit that this is a matter taken, by that new mutiny act, out of his decision and arrangement, and *expressly* placed in the power of another party to determine. By the 24th section it is clearly laid down that,—'no proceeding or trial shall be had *but* between the *hours appointed by the officer commanding* where the court martial is held,—which, in this case, means the officer commanding in Fort William, and which, we believe, can in *no* case mean the Commander-in-chief of the army. The present court, then, cannot sit save *between* such hours as the commandant of the Garrison shall name, and if he were to order that it shall not is but between the hours of *eleven* and five, then it could not legally proceed with the trial at ten *although* the Commander-in chief has directed it to do so. Nay, there *must* be the extreme hours, marking the interval for sitting, proclaimed in Garrison orders, or the trial cannot *commence*, for *no* proceeding shall be had but between the hours appointed by the officer commanding in the Fort. It is true, the Articles of War are not worded (in regard to this matter) so exactly as they should be in accordance with the mutiny act, *they* name the time between six in the morning and four in the afternoon as the ordinary interval for the business in question, but even then the 'officer commanding where the court-martial is held, must appoint, specially, the hours between which it may daily sit; for in that respect the statute is clear and imperative, and though the law may not prove a convenient or very practicable one, still *there it is*, and it must be obeyed if the proceedings of courts martial are to be rendered valid. The general order, we respectfully suggest, should have run, and should be amended, thus:—'A general court martial will assemble on (date) in Fort William, at such hour as the officer commanding the garrison (or in the Fort) may appoint,' &c. and we think that the subsidiary Garrison order should be so worded as to give authority for the sitting on every day to which the court may be adjourned, between specified hours, to save the trouble of a separate order for each day.

For the information of our military readers interested in the Bengal Infantry Bonus Fund, we are *authorised* to publish the rules now being printed for circulation marked No. I also a paper by the Secretary to the Fund (No. 2) approved by the management, for increasing the Bonus to Lieut. Colonels according to seniority. In order to expedite matters, it is desirable that all Absentees whether on staff employ, furlough, &c. communicate their approval or disapproval of each rule by a mere affirmative or negative attached to its number. In like manner to the proposed plan No. 2, to be submitted as most convenient either to Regimental Committees or to the Secretary in Calcutta post paid. Lieutenant Colonels are invited to explain their sentiments, and to make arrangements for the payment of subscriptions to the Secretary.

PROPOSED RULES FOR THE INFANTRY BONUS FUND.

1. Major Cox's plan No. 1, of the 30 Senior, and 48 Junior Regiments, contributing Rupees 300, and 230, respectively for each retirement, having been approved of by a great majority of votes: The Bengal Infantry Bonus Fund is to be considered as established, on the above principle.

2 The Presidency Committee of management, to continue to act as at present, with power to add to their Numbers subject to the approved of Regimental Committees,—each Committee having one vote.

3. Regimental Committees to collect the subscriptions of all officers who have joined the fund, belonging to their respective Regiments, whether absent or present, and remit the same to the Secretary at Calcutta, in any way most convenient to themselves, but free of all charges to the Fund, for Commission, &c. &c.

4. It is the duty of the Secretary, to give the earliest possible intimation, of intended retirements to the Regimental Committees, to enable them to collect the funds in time.

5. In Regiments where the major is a non-subscriber, the rateable scale shall be adopted; in case such non-subscriber should, at any future period, wish to join the fund, he is to make good all arrears, agreeably to Major Cox's original plan No. 1, and 1st Class.

6. The plan adopted by a majority of Regiments, for raising their contributions by a rateable scale to be considered binding on all officers, belonging to the Regiment that have not yet but may hereafter join the Fund, subscribers who adhere to Major Cox's plan, to contribute likewise under prop. 1st Cir. 2, whenever called on for that aid.

7. No officer, who has intimated his intention to join the Fund, can, upon any pretence whatever, be allowed to withdraw his name.

8. Officers on sick leave, or on Furlough to Europe, to contribute in a rateable proportion, according to their Furlough pay for the term of their absence, not exceeding the usual period of 3 years.

9. From the very handsome manner in which the Lieutenant Colonels have come forward to support the Fund, the managing Committee find themselves in a position to announce, that the full amount paid by each Lieutenant Colonel, in that grade, shall be added to his bonus.

10. Each Regimental Committee shall at all times be prepared to pay up, through the Agra Bank, or other Agency, subscriptions for two retirements; in like manner Lieutenant Colonels, should be ready to pay their contributions without delay to the Secretary to the Management.

11. All communications with the Secretary in Calcutta, to be addressed in the name of the officer holding the situation, and written on medium size letter paper, half margin and post paid.

12. Under no circumstances are Regimental subscribers required to pay for non-subscribers otherwise than as provided for in Circular 2 prop. 1st.

RATEABLE SCALE.

Alluded to in Rule No. 6.

		1st Class.	2d Class
Major 15 per cent. on Regimental allowances or say.....Rs.		120 0	92 0
1 Captain 10 per cent.. ditto.. ditto	,,	40 0	31 0
2 Capt. 5.. ditto.. ditto	,,	20 0	15 0
3 Ditto 4...ditto...ditto	,,	16 0	12 8
4 Ditto 3...ditto...ditto	,,	12 0	9 0
5 Ditto 2.. ditto...ditto	,,	8 0	6 0
2 Lieut. 10. ditto.. ditto	,,	25 0	19 0
6 Ditto 5.. ditto...ditto	,,	12 8	9 8
1 Do Junior 2. do.. ditto	,,	30 0	3 8 each.
3 Ensign 6.. ditto...ditto	,,	12 0	9 0
Jr. ditto 1 each...ditto	,,	6 0	1 8 each.

Approved by the Managing Committee.

(Signed) J. H. SIMMONDS,

January 23rd, 1841. *Secy. to the Fund.*

ENGLISHMAN, FEBRUARY 18.

The following letter from Candahar, dated 6th ultimo, appears to us to contain the *details* of the affairs lately noticed in the papers:—

'*Candahar, 6th January* 1841.—Here is the gup of this place. An Alizi Sirdar, named Auchtee Khan, lately started up in rebellion at Zemandour, some 100 miles west of this, 1,500 horse and foot, with 2 guns of the King's, went out to meet them. On the approach of the enemy the whole of the Dooranee Horse immediately cut their luckies, leaving the poor Artillerymen and a party of Peshawer Jezair and men (footmen arrived with long rifles like the picture in one of your late Magas, which looks more like Herschel's large telescope) to fight it out; this they did manfully till the 20 rounds of ammunition for each gun was expended, when the enemy cut in among them, took the guns and put them to route killing a number of Artillery and Footmen and a nephew of Rohamet Tukki, the Shah's Wakeel here. In the mean time the 2d Regiment Bengal N. I. under Capt. Farrington, with a party of Christie's and Affghan Horse, and 2 Guns under Lieut. Hawkins went out to strengthen our party. They came up with the enemy some 5,000 strong, encamped in and around an old Fort, and immediately attacked and dispersed them, killing some 80 or 100 of them, and retaking the two guns. Lieut. Young and Pattersen are both wounded, and we have lost some 20 men, principally Cavalry, as the enemy did not stand to allow the 2d to close with them. I believe the two officers *were leading the Cavalry* when wounded; this Corps went on service with only 6 officers, the 2d N. I. 42d and 43d, routed altogether 19 officers present. Pretty work for 3 corps on service; a shame that those on Staff employ as at Bombay are not ordered to join, it is only since the latter left that the fighting has begun in this country.'

As we shall be sure to have further remarks to make on matters connected with the military Commission of which General Brookes is President, we should not readvert to the subject now, were it not to publish a short extract from a letter received by us yesterday from the quarter in question, and written by an intelligent officer who has had much opportunity of acquiring personal knowledge, and seeing active service on the spot. He says:—'By the way, you have gained golden opinions in Scinde by your correct view of military affairs here, particularly the Clibborne one. You are perfectly right, and it is a singular coincidence that the finding of the Commission should exactly accord with your previous view. Unfortunately, any thing connected with the political department in Scinde used [this means before General Brookes's time] to be always strongly opposed by the military authorities; but what could the Bombay Government mean by issuing that order about Major Clibborne? Surely the Government of India will never approve of such proceedings. General Brookes himself is a clear headed man, young, and an excellent soldier. It is said the Commission will have to revise its, finding, and find out how the report got into the *Bombay Gazette*; but if the Court be made to revise their opinion, I think it more than probable they will add to it what will be still less acceptable in certain quarters than what has already been said.' Our correspondent then goes on to advert to the Bombay Government in terms of as little veneration as we should use in speaking of our Grandmother, for he pronounces them 'old women,' and really in some respects the censure appears to be deserved; for he says that previously to General Brookes' assumption of the command every department was more or less inefficient, and he instances, among other points, that there were about eight hundred men without arms, and that though there were plenty of guns of all sorts and sizes, and horses for the same, there was not a serviceable *trace* wherewith to attach them! General Brookes seems to have been abundantly exalted in some of the Bombay papers, but if he has succeeded in restoring order and efficiency out of the military chaos which he seems to have found there, we should say he deserved all the praise he has received, though we can account for there being a little snappishness between him and his Government.

The extensiveness and accuracy of the *Harkaru's* intelligence in regard to all public matters occurring between the Punjab and the Ditch, inclusive, has of late been so remarkably demonstrated that we grow the more and more diffident in expressing overselves of any opinions which go to denote that *our* information is different from his; but as in the cases of Mr. Masson's trip to Khelat, and Mr. Ross Bell's immediate 'resignation' or 'retirement,' or 'supplantation,' we did venture to throw a doubt upon our contemporary's accuracy—a doubt which would appear, so far, to be tolerably well founded—so we think we may be bold enough to correct him in regard to at comparatively minor item, namely the ensuing court-martial, over which he has some how bungled, in a manner which would not have discredited the *Courier* itself. The *Harkaru* gave out on Tuesday, quite promiscuous-like, that Major Davidson, the joint prosecutor, had retained Messieurs Turton and Leith, to assist him in conducting the case. Well, we who knew *that* to be a slight mistake, corrected it in our dawk edition of Tuesday, and also yesterday morning,—simultaneously with which last named correction, the *Harkaru* himself came out with that sort of rectification which makes at least as many new blunders as it explains away old ones, and which therefore exhibits the existence of just as much ignorance respecting the subject in question as had been previously displayed. The following is what he now says:—

'The General Court-Martial for the trial of Major Smith, which was to have set yesterday in the Fort, has been put off again until to-morrow, the 18th instant. The cause of this delay is the non-arrival of Major Garstin, who is to be one of the Members of the Court. We were wrong in stating, that Mr. Leith had been retained for the prosecution; he is to conduct the defence, and it is said, that Mr. Turton has nothing to do in the case, Captain R. A. McNaughten having been retained to conduct the prosecution.'

Now if *we* may be considered as a little better authority on the latter part of this intelligence, than our morning contemporary, the public (or such of them as feel an interest in the matter) may rest assured that Major Davidson means to have no assistance whatever, except, we presume, such as he is entitled to have from the official prosecutor, the Deputy Judge Advocate; and that at any rate Captain McNaghten will have no more to do with the case than Lieutenant Kaye himself (nay, perhaps, not so much, for the latter *might* be a member!) and that he has neither been asked to assist in the conducting of the prosecution, nor would he have complied with the request—*not* in regard to this case in particular, but to any case—if it had been made to him. He has occasionally given such assistance as lay in his power to Officers in their *defence* before Court-martial, in cases when he has considered them wrongfully accused, but it has never been his practice to assist in like manner at *prosecutions*, whether he may have deemed the charges fair and necessary ones or not; as he has always considered that from the moment a trial by Court-Martial is determined on, the Judge Advocate who is to conduct it, is, if competent for the proper discharge of his duty, a sufficient aid to the prosecutor. In respect to the few military law remarks which have appeared in this department of our paper, referring to the pending case, they have rather tended to the side of the accused than to the opposite one, though their design has been purely to secure the observance of the prescribed legal forms, and to obviate as much as possible all *bias* in the court, save what might eventually grow out of a due consideration of the evidence adduced.

The extract which we yesterday gave, in the *Military Chronicle*, from the *Madras Spectator* of the 6th instant, relative to the appointment by the Madras Government of local Major General Allan to the chief command of that army, on the death of Sir Samford Wbittingham, calls for more notice and attention on the part of our military readers than we had time or space to attract to it simultaneously with its publication. The *Spectator* says that considerable difference of opinion in certain high quarters was prevailing on the subjett there; and *we* say that no difference whatever should have prevailed upon it, because that it ought, of course, to have been determined *against* the nomination of the local Major General, in due and fair support of the rights of the Company's (Queen's) regular Major Generals, and conferred on the senior of them—saving the equal claims of any royal regular Major Generals—in actual command of divisions, or otherwise in active military employ. This had Sir Robert Dick been present (in Sir Hugh Gough's absence) he would of course have succeeded, as he will do, or has done, perhaps by this time, on his arrival at Madras, but the appointment of *local* Major General Allan is certainly a stretch far beyond the authority given for the employment of Her Majesty's Colonels having that local rank. But our private accounts, if correct, as we think they are, exhibit the *most wonderful* part of the business; for *they* inform us that the nomination of General Allan was actually supported by the opinion of two Company's officers, namely, the Military Secretary to the Madras Government, and the Adjutant General of the Madras Army! The *wonder*, above alluded to is not that Company's high official officers should give an opinion in favor of a Queen's officer's just claim—because that has been done on repeated occasions, and always will be done we trust—but that they should evince so much ignorance of the question at issue as should lead them into such an opinion; and should have felt so little interest in the welfare of their own service as to have (as this decision of their's shows them to have) so superficially studied the *principles* of the Fane brevet question as to have formed so erroneous a judgment in regard to it, as the making it this practically work proclaims. As usual, we must look for a *just* and comprehensive settlement of this part of the case, to the Government of India, in whose keeping the interests of the minor Presidencies' armies are we believe much more secure than in that of their own respective Governments. Sir Robert Dick is now the only regular Major General of the Queen's army on the Madras establishment. All the others are but *local*, and as we cannot construe the late home orders so as to entitle a local Major General to the command-in-chief, we are of opinion that Major General Woulfe should have been appointed in the absence of Major General Dick; and although the arrangement which has taken place must prove but a very temporary one, still as it breaks in upon a right principle, and destroys the just claims of the Company's Major Generals, we do anxiously hope that the Governor General in-Council may be induced to take the matter up, and decide upon it firmly.

ENGLISHMAN, FEBRUARY 19.

We understand that since the publication of our last article but one, on Hyderabad affairs, the Resident addressed a formal note to the Minister, acquainting him that it never was his, the Resident's intention, to constitute himself a patron of Mr. Dighton, or to interfere in that gentleman's favor, in the manner we shewed he was believed to do.

This is all, we doubt not, fair and well meant enough on the part of the Resident, but it is much too late to serve any useful purpose at Hyderabad, though the note will doubtless be adduced at head quarters as a full vindication of the Resident's proceedings.

Nearly two years of intimacy with, and extravagant eulogium upon Mr. Dighton, on the part of the Resident (to say nothing of his having placed that gentleman in the unprecedented position of umpire over the minister and one of his subjects) have shewn the minister what the Resident's *real* wishes and opinions are respecting that gentleman; and the minister is quite crafty enough to feel that the more Mr. Dighton's conduct is criticised and commented on, either in matters where, like Kishen Doss's case, the Resident by refusing to interfere or inquire has virtually expressed his approbation,—or, in consequence of proceedings into which, as in Poorum Mull's case, he was led by the Resident himself, the more, in all human probability, will the Resident be disposed to take his part, and identify himself with him, so far as public appearances will permit. Mankind are much more easily swayed through the medium of their prejudices and partialities, than through that of their principles, and no one knows this better than the Minister, or will be more sure to act upon it. Besides, the minister knows full well, that were he now, immediately upon the receipt of the Resident's note, denying all interest in Mr. Dighton, publicly and at once to throw Mr. Dighton overboard, or even reduce his influence to the condition in which it stood before Major General Fraser's arrival, it would be in effect the severest censure he could possibly pass on that officer's previous conduct—the greatest affront he could offer him, and the one of all others least likely to be forgotten or forgiven.

It would be in effect to declare publicly to the Governor General that (which we understand to be literally the fact) he had only shewn so much deference and conceded so much influence to Mr. Dighton before, in consequence of his being persuaded, by the Resident's conduct, that the officer had identified himself with that gentleman—but that, when once assured that he might do as he pleased in that respect, he had at once proved the extent of the constraint under which he had formerly laboured by immediately letting Mr. Dighton's influence sink to its former state of insignificance.

The Resident we learn, has of late greatly softened, if not entirely abandoned, that system of minute, petty, and constant interference with the minister, to which we so often allued; and as quiet is all that the Minister wants, he will not be the person to trouble the quiet waters by pursuing a line of conduct so unequivocally condemnatory of the Resident as that to which we have alluded—indeed we believe the old gentleman would as soon face the Prince of Darkness as the burst of exasperation which such conduct would infallibly excite against him.

The Minister knows the Resident's private feelings and wishes in this matter; he knows them from the Resident's *acts*, and no *word* that the resident can *now* use, will make him alter his purpose of securing Mr. Dighton's good will at any cost, to conciliate the resident by this deference to his private wishes—a deference which will come with all the better grace, if, as we learn the Resident has been, at length, obliged to give a public denial of those wishes—or rather a denial that he entertains any such wishes in his public capacity.

We understand there is one way in which justice might perhaps be done, to a very partial extent, between Kishen Doss and Mr. Dighton, and as we are informed that there is a late precedent for it (we forget what it is and have mislaid our informant's letter) we will mention it, though we must at the same time reiterate our thorough conviction, that, so long as General Fraser remains at Hyderabad, none but British subjects will ever dare to do justice, in any case where Mr. Dighton is concerned. What we mean is that a suggestion should be made, as on a former occasion, to the Nizam's government, to appoint some of its own officers (we mean those commanding its own irregulars, not the British officers commanding the Reformed Troops) to equire into the case and to enforce their award. As the (alleged) injustice in question (and most gross it was if there be a particle of truth in K. D.'s statements, or Mr. Dighton's letters and writings on which those statements are founded) originated in a great degree in the influence which Mr. Dighton was understood to enjoy with the Resident, and as both that officer and the Supreme Government (acting probably upon his suggestions, advice, or representations) have refused to make any enquiry themselves into this case, the least which the Government can do, disposed as we are sure they are to avoid even the appearance of sanctioning oppression towards the natives on the part of British subjects, is to enquire whether there be not such a precedent as that to which we have referred, and if so to recommend its adoption in the present instance.

HURKARU, FEBRUARY 15.

We have letters from Dhost Mahommed's escort, dated the 29th ultimo—on which day the escort crossed the Ravee. They were to have halted on the 30th, and in five more marches would have reached Ferozepore. The Dhost is in good health and good spirits, and all the officers of the escort have enjoyed the march exceedingly. His favorite amusement is hawking, with which he amuses himself almost every day; he is said to have excellent sport, bagging more game than all the officers together with their guns and greyhounds.

The Bombay papers have for some time past been putting forth most contradictory statements regarding the surrender of Nusseer Khan. Long before Colonel Marshall's engagement with the Brahooes, and now again, ever since that affair, it has been stated, time after time, that the Meer has come in; and lately, all the papers of the Western Presidency have conspired to give out this information as an undoubted fact. The *Gazette* was the first to publish the news —the *Courier* confirmed it, and then the *Times*, —whose Sindian and Cutchee correspondence is both ample and correct,—communicated the incident to his readers, as one of which there was not the least doubt; but we are now in possession of information, which enables us to assure our readers, on undoubted authority, that, up to the date of the last received advices from Scinde, Nusseer Khan had *not* surrendered himself. He was still at large, but only holding out with the hope of obtaining for himself more favorable terms than have yet been offered to him. Hemmed in, as he is on every side, it will be useless for him, or rather for the chiefs by whom he is guided, to protract the struggle, and we may expect, therefore, soon to hear some authentic account of the young Meer's surrender.

HURKARU, FEBRUARY 17.

The General Court-Martial for the trial of Major Smith, which was to have sat yesterday in the Fort, has been put off again until to-morrow, the 18th instant. The cuse of this delay is the non arrival of Major Garstin, who is to be one of the Members of the Court. We were wrong in stating, that Mr. Leith had been retained for the prosecution; he is to conduct the defence, and it is said, that Mr. Turton has nothing to do in the case, Captain, R. A. McNaughten having been retained to conduct the prosecution.

MEDICAL AND PHYSICAL SOCIETY.

Proceedings of a Meeting of the Medical and Physical Society, held at the Asiatic Society's Apartments, the 6th February, 1841.

N. Wallich, M. D., Vice President, in the Chair.

MEMBERS PRESENT.

G. Angus, Esq., D. Stewart, M. D., W. Bogie, M. D., H. H Goodeve, M. D., R. O'Shaughnessy, Esq., G. J. Gordon, Esq., J. Macpherson, Esq., F. Mouat, M. D., T. Ledlie, Esq.

After the proceedings of the former meeting had been read, the Vice-President addressed the members in a short speech, on the loss which the Society was about to sustain by the immediate departure for England of one of its oldest members C. C. Egerton, Esq., who, for a period of 17 years, had scarcely once missed being present at the meetings of the Society, and who had ever aided it by his counsel, and taken a most lively interest in its proceedings.

Dr. Wallich then proposed the following resolution.

Resolved,—That a record of respect, and esteem for Mr. Egerton, be entered in the minutes of the proceedings, and the regret which the Society experienced at Mr. Egerton's departure. This was seconded by Dr. Goodeve, and concurred in most fully *by all* present.

The following gentleman was then proposed as a Member of the Society.

J. Murray, M. D., Officiating Inspector General of Hospitals, proposed by W. B. O'Shaughnessy, M. D., seconded by D. Stewart, M. D.

In reference to an enquiry called for, by Dr. Stewart, at the last meeting, as to the number of members resident and non-resident who had applied for books from the Society's Library for the past year, and the expense of the Librarian, the former being shewn to amount to six members during the past year, and the expense of the Librarian being 16 rupees per month.

The following resolution was proposed by Dr. Stewart resolved,—That seeing how little use is made of the Library by resident members, and the expense at ending its guardianship, it be forthwith presented to the Medical College, where it will be more extensively useful to the profession, and equally available to the members of the Society.

Mr. Gordon spoke in favor of the resolution and considered that by its removal to the Medical College its utility would be much increased.

Dr. Jackson regretted, that the subject should have been brought forward. He considered that the members who were present held this property, but in trust, and that they had no power to alienate the library, and to transfer it to any place they ch se. That the library had been presented to the Society in part by some of its earliest members, and had received additions from others, as they quitted the country; and that the library, therefore, so long as the Society was in existence, could not by the resident members be given away, and that much as he felt interested in the success of the rising establishment of the Medical College, and the increased prosperity of its library—he did not think that this donation could be granted.

Mr. Angus considered that the Society might with equal justice hand over to the Medical College, the three Bank Shares which the Society held.

Mr. Gordon replied that this was totally a different case; that the three Bank Shares were in use for the benefit of the Society—with it appeared that the Library had been but of little avail during the last year—only 6 members having taken out books, or at the rate of half a man per month. That if the Library was considered as trust property, it might be made over in trust, in a similar way as the Government Public Library.

That as in all societies the executive was vested in a few, and these had the power of making any changes they considered expedient, so also had the Resident Members as agents the same power if they chose to exercise it.

Dr. Jackson considered the case of the Government and that of the Resident Members of Medical Society very different. That one gave away their own, in trust; whilst the Society were the party who held the trust and were similarly circumstanced with the Public Library, and had no right to make over their trust to a third part.

The number of applicants for books during the last year was certainly small, still it must be remembered that the number of resident members were not numerous—that many of them possessed extensive medical libraries, and did not require the use of the Society; but that to others, himself amongst the number, the Society's Library was a great convenience, while its position was so centrical that the library could be visited, and books examined without the least delay or trouble. He certainly should regret exceedingly to see the change proposed carried into execution, and should vote against it.

Dr. Goodeve remarked, that he was far from being lukewarm to the gift, but knowing the impression which it would cause, as little favorable to the Society as to the Medical College, and fearing the obloquy which this measure would draw down upon the College, unless recommended by the Mofussil Members generally, he felt himself—unwilling to vote for such an alteration.

Dr. Mouat then proposed an amendment that the members of the society at large should be written to on the subject.

On this another amendment was proposed by Mr. Angus, that the members of the society being scattered so far and wide, some in Europe as well as in this country, he considered it would be far better if the whole question was dropped. The number of votes being in favor of this proposition, after the Vice President had spoken against the removal of the Library, the discussion terminated, and the current business of the evening proceeded.

The following papers were read, and discussed:

1.—On the successful treatment of Phymasis by the application of ice.

Presented by W. L. McGregor, M. D.

2.—A very interesting notice of the late visitation of Cholera at Daca, by G. Lamb. Esq., Superintending Surgeon, with barometrical observations.

The disease chiefly attacked young persons, children from 2½ to 12 years of age, and strong and healthy young men. Few women, were attacked, and few men above 40. The recoveries in the first instance, were not more than one in three, but latterly these become more frequent, and not more than one in three or four died. The children seemed to resist the disease better than the grown up patients; they frequently rallied, and only sank after repeated relapses—every system of treatment proved inefficacious in the first cases. The Cholera made its appearance at the two extremities of the town. On the banks of the river, while the more Inland Streets, and the whole of the central portion of the town remained free; though fever prevailed in these quarters.

During the prevalence of the Cholera, great and sudden increased pressure of the atmosphere was observed.

3.—Case of Urinary Fistula, with extensive effusion into the Cellular Membrane, treated by Mr. L, of St. George's Hospital, communicated by Dr. D. Stewart, Presidency Surgeon, with notes.

4.—A strong marked case of Hydrophobia, treated in the General Hospital—presented by Henry Chapman, Esq., Senior Assistant Surgeon.

This melancholy case occarred in a young man, about 26 years of age, who had been bitten on the thumb and forefinger of the left hand by a tame jackall 20 days before admission, and three days subsequently was again bitten on the same hand by a pariah dog. The wound healed rapidly, but he had great dread of being attacked with hydrophobia. He felt indisposed the day before admission, and had a sleepless night; when warm water was brought to him in the morning, he started from it in great alarm, and on attempting to drink some cold water was unable to do so.

On admission at 7 A. M., he complained of pain in the injured hand extending up the arm —there was no appearance of inflammation. His pulse was frequent, state of skin natural, no enlargement of the Sublenqual Glands, was perfectly aware of the nature of the Malady but did not manifest alarm. When requested would make attempt to drink water and conveyed the jug containing it steadily to his mouth, but immediately he attempted to swallow, the fluid was ejected with convulsive force, and started back in great distress. A dose of calomel and croton oil was given him with 5 grains of the extract of hemp, which was repeated every half hour for 5 grains.

After the 5th dose the pain in the arm had gone, and he had no epasm.

Had then ten grains of the extract. At 3 o'clock he complained of being uneasy about the neck, and wished for an orange.

A convulsive paroxysm was brought on by attempting to swallow the first portion of the orange, but he succeeded by strong efforts in swallowing two more at 4. He complained of being chilled about the chest, the hands were cold, the skin was covered with perspiration, and he became desponding.

Ten more grains of the extract of hemp were given, 5, 6, and seven o'clock. He talked wildly, appeared under the influence of the hemp, which on consultation was discontinued —had no return of spasms—at half past seven, said that he was well, was smoking a cheroot, and free from all pain.

At half past 8 had suddenly a violent convulsive paroxysm. These returned in frequency and severity during the night, and at 6 a. m. the following morning the convulsions were frightful and almost incessant, and he sunk suddenly about half-past seven.

5. A small calculus presented to the Museum. by A. Smith, M. D., of Hidgillee.

6. A very large urinary calculus, removed from the bladder of a native at Lucknow, presented by D. Menzes, Esq.

Communication received.

A long and very carefully drawn up report on the sickness and mortality of the seamen in the Howrah Hospital during the last four years.

Presented by W. A. Green, Esq.

JOHN JACKSON, M. D., *Secretary*.
Medical and Physical Society.

Hurharu, February 19.

HURKARU, FEBRUARY 20.

The *India* Steamer has brought us Madras papers to the 13th. Sir R. Dick arrived on the 11th, but there is no other news of interest.

The H. C. Steamer *Diana*, which arrived yesterday, brought hither the person of Tunkoo Mahomed Saad, the Quedah Chief, as a State Prisoner. We regret to say, that the Quedah question, in all its bearings, must be regarded as a deep reproach to the British name, and to British power in its abuse. We have not time to-day to bring the treatment which this unfortunate chieftain has sustained at the hand of the delegates of British power, succinctly before our readers; but we shall take an early opportunity of so doing, in such manner, we hope, as by stating the truth, we shall command their sympathies in favor of this victim of our oriental policy.

The *India* Steamer has, we are happy to say, made her appearance, having anchored off Calcutta yesterday. She left Madras on the 14th instant, at ½ past 9 P. M., and arrived at the Floating light on the 18th instant, which run may be computed at 800 miles, at a rate of 9 knots per hour. During the passage from the Sister Presidency, the weather was fine and the sea quite smooth. On quitting Madras roads, the vessel's draft of water was, forward 13 feet 8 inches, aft 14 feet 6 inches—ten inches by the stern, which may be fairly considered the best possible trim for trying "*the powers*" and the "*India*," particularly as the quantity of fuel on board was only 154 tons, quite sufficient, however, for the trip up. The passage from Plymouth to St. Vincent, with 500 tons of coal on board, also gives good data to judge from, in forming an opinion of the power of the engines. The distance steamed to that island by observation was 2,353 miles, at an average of 7853 knots per hour. Looking at the log, it may be said the *whole voyage* has been a continuation of fine weather, except for about seven days after leaving Plymouth, when the sea and wind reduced the rate of steaming to 5° 21′ knots per hour. The *India*'s powers are somewhat feeble, when compared to several of the magnificent steamers now afloat, viz:—the *Great Western*, *British Queen*, *President*, *Oriental*, *Liverpool*, *Britannia*, *Acadia*, *Caledonia*, *&c.* The last four named vessels are the new packets established to run from England to America, between Boston and Halifax, each being 1,200 tons, builder's measurement, 400 horses power, and constructed with all the late improvements. As to the formation of line, and make of engines, these splendid vessels may be justly pronounced the *best* steamers yet constructed. It is common for them to run a passage at the average rate of ten knots per hour, and the three last built have gone from 12 to 23 knots in very fine weather. They are all designed by the celebrated steam builder, Mr. Wood, of Glasgow, the gentleman who first laid down the true form for all steamers, viz, a flat body midship, with sharp extremes. There is, however, a far more powerful Steamer, now constructing. The Bristol folks are fast progressing with the *Iron Leviathan*, of more than 3,000 tons register, the dimensions of which *mighty* vessel are as follows:

Length from stem to stern post on deck	280	0
Breadth	42	0
Load draft	15	6
Power	1,000	horses.
Displacement on real tonnage	2,900	tons.

The *Queen*,—the largest ship in the British Navy,—which was launched last year, is only 205 feet upon deck.

But we are forgetting the *India*. The following are her dimensions:

Length from stem to taffrail	200	6
Ditto from stem to tern, post on deck	189	8
Breadth, extreme at paddle shaft	28	10
Breadth of sponcing, each,	4	6
Builders' measurements	756	tons.
Steam ditto by law	726	,,
As a sailing vessel by ditto	1,206	,,
Number of horse power	300	

The *India* is very elegantly fitted up, being well deserving the inspection of the good folks of Calcutta, and we are sure, that our old friend. Captain A. Henderson, (formerly of the *Water Witch*), who is in command, will afford visiters every facility for taking a survey of the vessels. It is to his abilities and indefatigable exertions, the owners of the *India* are greatly indebted for her reaching the *Hoogly* safe and sound, without even the slightest accident.

BURMAH.

MAULMAIN CHRONICLE, FEB. 3.

We learn that difficulties have occurred to interrupt the course of trade between the Shan states and Maulmain, and that consequently our Commissariat may not expect this year the usual supply of cattle from that quarter. We hear that some more than two hundred persons, traders from Maulmain, who went up to those regions several months ago with various articles of commerce, are still there, and that among them there is computed to be about a lakh of rupees, which cannot be employed in any investments. About two hundred cattle were purchased, and while on their way to Maulmain were stopped by authority, and are not permitted to proceed till the purchasers shall have given the names of all the persons of whom the cattle were purchased. The object of this requisition is to levy a tax upon the former owners of the cattle—or, in other words, to abstract a certain part of the price realized by the sale of the cattle. The tendency of this proceeding, it will at once be perceived is inevitably to put an end to the trade in question. It is not at all unlikely that this interference is agreeable to orders received from the seat of Government at Bankok, and may possibly bear some relation to the position of our affairs with the Chinese Empire.

We have lately come to the knowledge of some facts, which, we believe, are not uncommon in the bazar, and which those who are in the habit of purchasing their daily supplies at that place, will find it for their interest to look into. We allude to the diversity of weights used, and the manner of using them. Sometimes the Burmese viss and sometimes the English pound are used and as there is no regulation for weights and measures in force, one may see a considerable variety of them in the bazar,—either brass, lead or stone. The brass weight may probably be taken generally as correct; but as to the accuracy of the other weights, the purchaser has merely the word of the other party to depend on, and therefore it may be reasonably doubted. We know an instance in which a stone, said to be a viss-weight, was used, and on being compared with the brass weight, was found to be less by two rupees. It is not at all unlikely that a deficiency would be found in many such weights throughout the bazar, were a careful and strict examination to take place, a manner not to excite suspicion that detection were the object. The Burmese viss is equal to 3 pounds and ounces (nearly) Avoirdupois, and being converted into Troy weight, will be equal to a small fraction more than the weight of Co's Rs. 140. A deficiency of 2 Rs. therefore, in the weight of a viss is not much, unless the article sold be valuable, but it is as evidently a designed deception as if it were much greater. In some instances, articles are sold by the *pound* and the fractions of the Burmese viss used as weights—a most absurd anomaly, and cannot be accurate without a much closer calculation than is likely to be made by the bazar retailers. But the greatest cheating is performed by the steel-yard, used generally at the meat stalls, and is effected by a slight motion of the hand by which the hook is suspended, on the short arm of the lever, and will pass without detection unless the eye of the purchaser is particularly watchful. We know an instance in which a bit of meat was delivered to the purchaser, which apparently weighed some more than 11 pounds; it was paid for, but the suspicions of the purchaser being excited, he demanded that it should be immediately re-weighed. The seller, finding the action of his hand scrutinized, could not manage the affair successfully a second time, and the purchaser, taking the steel-yard and suspending it fairly, found the weight about three pounds less than the worthy butcher had made it. We have merely brought this subject to notice, that heads of families may, if they choose, take care that they do not pay for what they do not get. We are not aware that any penalty can be incurred in such cases, as there is no rule of government in force touching the weights by which articles shall be sold, and therefore the cheat may either make up the deficiency, or refuse to sell you the article which you want. Most people, we presume, will question the propriety of the use of various and divers weights in a single community; but they should understand that nothing but the interference of Government can prevent the practice, and how far that can be exercised with propriety, is a question on which there is a difference of opinion. We can only say that a Government, who establishes by law a medium of exchange by coining money, cannot be chargeable with inconsistency if it employ its authority to establish the use of uniform weights and measures.

MADRAS.

ATHENAEUM, FEBRUARY 18.

The Ship *Apolline*, Captain Deane, will sail about the 25th instant for the Straits and China. Government has accepted her tender to take *one* Officer to Penang; *four* Officers, *one* Sub-Conductor, *two* Assistant Apothecaries *one* Fife Major, *one* second dresser, *twenty four* Gunners, *fifteen* Gun-lascars, *three* store lascars, and *one* Subadar Major to China; and thirty five native convicts to Singapore. She is well laden with cotton, sandal-wood, and other good freightage.

Mr. Sullivan and family will leave the hills on the 22nd instant, and are expected at Trichinopoly on the 25th, whence they will proceed to Negapatam for embarkation on board the *John Line*.

We understand that Lord Elphinstone contemplates making an occasional stay during the coming months at Ennore, as a house has been engaged by him at that place for this purpose.

ARCOT, *February* 16.—On Sunday last, eight pieces of Ordnance, some missiles, and a bandy laden with boxes, said to contain Armour composed of the precious metals and of great value, arrived here from Kurnool on route to Madras, escorted by a naigue and six privates of the 48th N. I. under the command of a Serjeant of Artillery. The articles afforded considerable amusement to many who went to see them in the course of the day. The ordnance consisted of two Mortars, cast in the shape of Tigers, with a due or rather undue proportion of tail turned up, stretching a considerable distance over the back, and of curious workmanship, but presenting a most ludicrous appearance: two Guns, apparently 32 Pounders, two 12 prs. and 2 very long 3 prs.—the whole of such strange and unwieldy proportions, as to leave little to fear from such weapons, if brought into action against our own lighter and more serviceable 6 Prs. a couple of Divisions of which, would, I doubt not, soon silence the whole of them. There is also a shell of enormous dimensions, about thirty inches in diameter; it is said, adapted to Mortars which were found in the Fort at Kurnool, but which would probably be the destruction of those who might attempt to employ them against an enemy.

They will probably arrive at Madras on Monday next and to those fond of the marvellous, a visit to them would not be time lost as they are really curiosities.

Brigadier Napier arrived on Saturday evening last, and commenced the inspection of the 7th L. C. yesterday morning, when the Regiment was out in heavy marching order. It paraded again in the evening in full dress when departments &c. were inspected. This morning it was out in Review order, at which the usual quantum of galloping, confusion, and dust, was displayed The affair went off uncommonly well and elicited great commendation from the reviewing Officer. The Regt. will parade this evening for Ball practice, and tomorrow for Riding School drill &c.

The wife of a Choudry of the 7th L. C. while the Regiment was at parade yesterday evening, hung herself from the roof of her hut. When discovered, she was quite dead. Jealousy, it is said, caused her to destroy herself.

UNITED SERVICE GAZETTE, FEB. 19,

NEPANEE.—We are sorry to learn from a Correspondent at Belgaum that the Political Agent had returned to that Station on the morning of the 9th, having been unable to effect the arrangement hoped for with the Nepanee Chieftains; the Arab Jemedars whose influence we before alluded to, having refused the terms offered by Government. Orders had consequently been issued for the march on the 13th, of a Field Detachment under the Command of Major Vivian of the 18th, having as his Staff Officer, Captain Gordon of the same Corps, Docto-Pollock, Field Surgeon, a Commissariat Warrant Officer in charge of supplies and two Ordnance Warrant Officers in charge of that Department. The Detachment is composed as follows:—

Four Brigades of Guns consisting of 2 Nine pounders; 2 Mortars of 8 and 5½ inches respectively with one 12 pounder battering Gun under Captain Burgoyne and Lieut. Purvis of the Artillery.

One Flank Company of Her Majesty's 4th Foot under Captain Faunce, and Lieutenant Madigan.

Two Flank Companies of the 18th N. I. under Captain Cowie with Lieutenants Johnston and Stevens.

Two Flank Companies and the Rifles of the 56th N. I. under Captain Halpin and Bayley with Lieutenants Wilson and Ward.

The Detachment is accompanied by Assistant Surgeons Evans and Peterkin, and would be joined if requisite by 400 of the Silladar Horse of Chintomle Rae Singlekur. We trust, however, that there will be no necessity for coming to blows, and indeed it is to be presumed, that the mere presence of Major Vivian's Detachment before Nepanee, will at once satisfy the Arabs of the futility of resistance and lead them to accept the proffered terms of the British Government.

MILITARY INTELLIGENCE.—We understand that the Appointment of Major General Allan, C. B. to the temporary command of the Army, has been annulled by the Supreme Government, who have decided that Major General Woulfe was of right entitled to succeed to the command Of a verity this is a very awkward business, for we presume that all General Allan's Official Acts, more especially the confirmation of Courts Martial, will thus be rendered null and void, since he was not a duly constituted authority. The Court Martial sitting in Fort St. George was ordered at once to stay proceedings, and adjourn, so soon as the decision of the Government of India reached this Presidency on Monday last, but a second Court Martial is now sitting to investigate the conduct of another of the officers connected with the affair on board the *Lady Flora*, and it is reported that two others who were concerned in the same unfortunate business, are likewise to be tried.

Our Coorg Correspondent mentions the arrival at Mercara of the Head Quarters and Right Wing of the 23d L. I. on route from Mangalore to Bangalore upon the morning of the 11th instant. No casualties had occuedrr during the march, and with the exception of one or two slight cases, the sick list was a blank. The 23d, says our Correspondent, is a very fine looking corps, quite maintaining their ancient character for appearance. An Entertainment was given by the Officers of the 28th to those of the 23d, on the day of their arrival, and the Wing continued its march to Bangalore on the morning of the 13th. We are sorry to learn from Mangalore, that several malicious attempts have been recently made to destroy the Lines of the Sepoys of the 46th N. I. the cause for which acts of villainy, no one can guess at, but precautionary measures have been adopted to prevent, if possible, the recurrence of such attempts in future. We have on many occasions commented strongly on the inefficient state of a large portion of the Arms of every branch of the Service and are credibly informed that the firelocks in use with the Hyderabad Subsidiary Force, having lately undergone a minute inspection by Companies, full one third of them were found to miss fire nearly as frequently as they went off, in consequence of the wretched state of the hammers and springs. Surely the supplying Troops with such inferior firelocks is the very worst economy!

The military Board has, we understand, authorized the entertainment of the regulated number of artificers for the 37th N. I. This looks as though Government consider the safety of the "Golconda" as hopeless, for the Regimental Artificers were all embarked in that long missing vessel. The Details proceeding to China in the *Appolline* are ordered to hold themselves in readiness to embark at the shortest possible notice. A large quantity of stationary has been already received into the new Depot and the remainder is in preparation for removal.

CEYLON.

Civil Appointmen.

THE RIGHT HON'BLE THE GOVERNOR is pleased to appoint P. E. WODEHOUSE Esq. to be acting Government Agent for the Western Province, during the absence of C. R. BULLER Esq., proceeding to England on leave of absence for eighteen months.

By His Excellency's Command.
GEORGE TURNOUR,
Actg. Col. Secy.

Colonial Secretary's Office,
Colombo, 4th February 1841.

Civil Appointment.

IN pursuance of Her Majesty's command the Right Hon'ble the Governor has been pleased to direct, that Letters Perent be issued under the Colonial Seal of this Island, appointing ROBERT LANGSLOW Esq., to be District Judge of the District Court of Colombo No. 1 South —Date 27th January 1841.

By His Excellency's Command.
GEORGE TURNOUR,
Actg. Col. Secy.

Colonial Secretary's Office,
Colombo. 4th February 1841.

Civil Appointment.

THE RIGHT HON'BLE THE GOVERNOR has been pleased to appoint J. JUMEAUX Esq., to be Fiscal for the Western Province—Date 1st January 1841.

By His Excellency's Command,
GEORGE TURNOUR,
Actg. Col. Secy.

Colonial Secretary's Office,
Colombo, 4th February 1841.

OBSERVER, FEBRUARY 8.

Reward of £ 21.

This unusually large reward is offered in Saturday's *Gazette* for the apprehension of a prisoner named Poonche Callua, who made his escape from Kandy on the 31st ultimo. His crime does not appear.

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Supplement to the Bombay Gazette.

WEDNESDAY, MARCH 3, 1841.

Report of the Proceedings in the Supreme Court of Bombay, regarding the Will of the late Doctor David Forbes.

Messrs. FORBES AND CO. present their compliments to the Editor of the *Gazette* Newspaper, and request him to insert therein the accompanying Report of the proceedings in the Supreme Court of Bombay, regarding the Will of the late Doctor DAVID FORBES.

Bombay, 25th February, 1841.

IN THE SUPREME COURT OF JUDICATURE AT BOMBAY.

ECCLESIASTICAL SIDE.

In the matter of the Administration with the Will annexed, of the effects of David Forbes, Esq., late a Surgeon in the First Regiment of Light Cavalry, in the Service of the Honorable East India Company, on their Bombay Establishment, deceased.

CHARLES FORBES, *of Bombay Merchant, Petitioner.*

Warrant.

BOMBAY TO WIT. The Petitioner abovenamed puts in his place and stead, Charles Hardy Bainbridge, Gentleman, Proctor, to apply for and obtain Letters of Administration in the above. Dated this 15th day of October 1840

CHARLES FORBES.

Witness
RAGOONATH LUXAMONJEE.

Affidavit verifying the execution of the Power of Attorney.

CURSETJEE JAMSETJEE of Bombay, Parsee Inhabitant, maketh oath and saith, that he is well acquainted with the signature and hand writing of James Neish, (formerly of Bombay, Master of the ship Fort William, which was belonging to this deponent's father, Jamsetjee Jejeebhoy, but now residing as this deponent verily believes, in the town of Dundee, in that part of Great Britain called Scotland,) from having frequently seen him write and sign his name, and that the name, signature and addition of "James Neish of Dundee," set and subscribed to the deed poll or power of attorney hereunto annexed as a party attesting the execution thereof by David Forbes, the party therein mentioned, are the signature and in the handwriting of the said James Neish to the best of this deponent's knowledge and belief.

CURSETJEE JAMSETJEE.

Sworn at Bombay aforesaid, this fifteenth day of October, 1840.

Before me
GEORGE ROBERTSON,
Commissioner.

(Sd.) PATCH AND BAINBRIDGE.

Power of Attorney.

KNOW ALL MEN by these presents that I, David Forbes, Newbigging near Dundee, in the county of Forfar, North Britain, Father and Executor of David Forbes, late a Surgeon of the First Regiment of Bombay Light Cavalry, deceased, have made, constituted and appointed as I do by these presents, make, constitute and appoint Charles Forbes, John Bowman and John Grant Malcolmson, jointly and severally co-partners under the Firm of Forbes and Company of Bombay, and all and each of the persons who now are, or during the continuance of these presents may be, Partners carrying on business under the said Firm, my true and lawful Attornies for me and in my name, and to my use, to ask, demand, sue for, recover, and receive all such sum and sums of money, debts and demands of whatever nature which were due and owing to the said deceased David Forbes, at the time of his death by any person or persons either in his own right or as Executor or Assignee of any other person, or which have become due and owing to his Estate since his death, and upon payment or recovery to grant releases, acquittances and discharges for the same, and also to intromit with, manage, sell and dispose of all lands, hereditaments, mortgages and other subjects effects and chattels of what kind soever, real or personal, which belonged to the said David Forbes deceased, or which he was possessed of or an way interested in, at the time of death in whatever part of the world the said lands, hereditaments and other subjects, chattels and effects are situated, and which are now descendable to me as Executor and Administrator of the last Will and Testament of him, the said David Forbes, and also to settle all matters, accounts, claims, debts (or claims) or things whatever between him and any other person or persons who were Trustees, managers or Attornies for him, or with whom he was in Company, trade or had any dealings whatever; and upon such settlement the said Trustees, Managers, Attornies and other persons concerned to release and discharge, and particularly to settle and adjust, all matters, accounts, claims, dents or things between the said deceased David Forbes, and any person or persons with whom he was in a co-partnery trade, or who may have administered to the estate of the said deceased David Forbes, and to receive from any such person or persons the share belonging to him, the said deceased David Forbes, of the Stock in such joint trade or the value thereof, and the whole lands, hereditaments, estate and effects of whatever kind, real or personal, which belonged to him, and which any such person or persons have intromitted with in consequence of his or their administration or otherwise, and in my name, and for my use, to enter to the full possession of the premises, and upon payment or delivery such person or persons to acquit, release and discharge, and giving and hereby granting full power to the said Charles Forbes, John Bowman and John Grant Malcolmson to enter into all transactions and references necessary or which they may judge expedient for the settlement of the said David Forbes's affairs and recovery of said lands, hereditaments, debts, chattels and effects, and to grant compositions or eases to his debtors; and in my name to make, grant, execute and deliver all proper deeds and conveyances in relation to the lands, hereditaments, debts, chattels, effects and others before mentioned which may be necessary for the effectual release and conveyance thereof in the most ample manners, and giving likewise and granting to the said Charles Forbes, John Bowman and John Grant Malcolmson full power to establish proper titles in my person to the said lands, hereditaments, debts, chattels, effects, real and personal, which belonged to the said deceased David Forbes according to the law and practice of the country where such lands, effects and others are situated, and also giving hereby and committing full powers to my said attornies for me and in my name to commence and prosecute all suits and actions at Law and in Equity, recover decrees, and put the same to execution and to use, and take all lawful ways and means for recovery of the said lands, hereditaments, debts, chattels and effects and others which they shall find necessary, and to substitute and appoint more attornies under them for all and each of the purposes aforesaid, and to remove and change them at pleasure and substitute others in their place, and generally for me and in my name to do, execute and perform all and every thing in and about the premises and every part thereof, and the recovery, management or disposal of the same which I could or might do myself if personally present, and which my said attornies shall judge expedient and proper; hereby ratifying, allowing and confirming all and whatsoever matters or things my said attornies shall lawfully do, execute and perform or cause to be done, executed and performed in and concerning the premises, and my said attornies are by their acceptance hereof bound and obliged to render a just account, reckoning and payment to me or those empowered by me of their intromissions in virtue hereof when required, after deduction and allowance of all their necessary charges and expences in the management of my said affairs, and a reasonable gratification for their trouble In witness whereof I have hereunto set my hand and seal at Dundee aforesaid, the Twenty second day of July one thousand eight hundred and forty, and of the reign of our Sovereign Lady Victoria by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, the Fourth year

(Signed) DAVID FORBES. (*L.S.*)

Signed, Sealed and delivered in the presence of
(Signed) WILL. COLVILLE } Laws, Scotland.
" JAMES NEISH of Dundee.

KANDAHAR, *Sunday, June 16th*, 1839

Exemplification of the Letters of administration under the seal of the Archbishop of Canterbury.

THIS is the last Will and Testament of me, Mr. David Forbes, Surgeon Bombay Establishment. I give and bequeath the sums as follows which will be found in the hands of my agents Messrs Forbes & Co Bombay, namely—

To my father Mr. David Forbes, Newbiggin, near Dundee, the sum of rupees 30,000 thirty thousand rupees, to each of my sisters Mary and Margaret the sum of rupees 10,000 ten thousand rupees Should any balance of funds belonging to my estate remain in the hands of Messieurs Forbes and Co. after paying the above mentioned sums, I bequeath it to my father as above assigned in Bengal Promissory Notes with Messrs. Forbes and Co. Rs. 25,700, the remainder in Cash—Signed D Forbes, Surgeon 1st Lt. Cavalry ——June 16th, 1839.

(True Copy)
(Signed) JAMES LIDDELL.
Capt. President of Committee (L. S.)

I hereby appoint Mr. Farquharson of the house of Forbes and Co as my agent, if he will kindly undertake the office, to see the within carried into effect.

(Signed) D F
Kandahar.

Extracted by Sladen, Glennie Farquhar and Sladen, Proctors, Doctors Commons.

WILLIAM, by divine providence Archbishop of Canterbury, primate of all England and metropolitan to our well beloved in Christ, David Forbes, Greeting—Whereas it hath been alleged before the worshipful Thomas Blake Doctor of Laws, surrogate of the Right Honorable Sir Herbert Jenner, Knight, a Doctor of Laws, master keeper or Commissary of our Prerogative Court of Canterbury lawfully constituted, on the part and behalf of the said David Forbes, that David Forbes, late a surgeon of the first Regiment of Bombay Light Cavalry at Kunda in Affghanistan in the East Indies Surgeon, having whilst living and at the time of his death goods chattels or credits in divers dioceses or Jurisdictions sufficient to found the Jurisdiction of our said prerogative Court of Canterbury, and whilst with his Regiment in Camp on actual military service in the East Indies make and duly execute his last will and testament in writing, and thereof nominated and appointed Andrew Farquharson sole executor, who hath duly renounced the Probate and execution thereof as in and by a certain Proxy under the hand and seal of the said Andrew Farquharson produced and shewn to the said surrogate, and now remaining in the Registry of our said Court, relation being thereto had will more fully and at large appear. AND WHEREAS it was further alleged that the said deceased died a Bachelor, and did not in his said Will name any residuary Legatee, that the said David Forbes is the natural and lawful father of the said deceased, and that on or about the sixteenth day of March last he, the said David Forbes, received from Messieurs Forbes and Company of Bombay a copy of the said Will of the said deceased, AND WHEREAS it was further alleged that the original Will is now in the hands of James Liddell, Esquire, Captain in the first Regiment of Bombay Light Cavalry in India, or on record in Her Majesty's Supreme Court at Bombay, and that the aforesaid copy is the most authentic copy now in this country, and that it is necessary for the due administration of the estate and effects of the said deceased that an administration (with the said copy of the said Will annexed) should be had and obtained without waiting the arrival of the said original Will or an authentic copy thereof (as in and by certain affidavits duly made and sworn to by the said David Forbes and Frederick Samuel Danvers, Esquire, now remaining in the Registry of our said client, relation being thereto had will more fully and at large appear, AND WHEREAS the surrogate aforesaid having duly considered the premises at the petition of the Proctor of the said David Forbes, Decreed letters of administration (with the copy of the said Will annexed) of the goods chattels and credits of the said deceased, limited until the original Will or an authentic copy thereof shall be brought into and left in the Registry of our said Court to be committed and granted to the said David Forbes on giving the usual security (we so requiring,) and we being desirous that the goods chattels and credits of the said deceased may be well and faithfully administered, applied and disposed of according to law, do therefore by these presents grant full power and authority to you, in whose fidelity we confide, to administer and faithfully dispose of the goods chattels and credits of the said deceased, and first to pay the debts of the said deceased which he did owe at the time of his decease, and then the Legacies contained and specified in the said Will so far as such goods chattels and credits will thereto extend; and the law requires upon having been already sworn by commission well and faithfully to administer the same, and to make a true and perfect inventory of all and singular the goods chattels and credits of the said deceased and to exhibit the same into the Registry of our said Court on or before the last day of December next ensuing, and also to render a just, a true account thereof, and we do by these presents ordain, depute and constitute you administrator (with the said copy of the said Will annexed) of all and singular the goods chattels and credits of the said deceased, limited until the original Will or an authentic copy thereof shall be brought into and left in the Registry of our said Court but no further or otherwise. Given at London, the Seventeenth day of June, in the year of our Lord one thousand eight hundred and forty, and in the twelfth year of of our Translation.

(Signed) CHAS. DYNELY, } Deputy
" JOHN IGGULDEN, } Registrar
" W. F GOSTLING, }

Extracted by Sladen, Glennie, Farquhar and Sladen, Proctors, Doctors Commons.

Certificate from the Ecclesiastical registrar of Bombay that the will was deposited.

I humbly certify to the Honorable Court that an original paper writing under the signature of the above named David Forbes deceased, purporting to be his last Will and Testament, and bearing date Candahar, Sunday June 16, 1839, has been this day deposited in my office by Messieurs Patch and Bainbridge, Proctors of this Honorable Court, dated this 14th day of October 1840

(Signed) SPENCER COMPTON,
Registrar.

MESSRS. PATCH & BAINBRIDGE,
Proctors.

The petition for grant of administration in Bombay which was used on the first application.

To the Honorable Sir John Wither Awdry, Knight Chief Justice, and the Honorable Sir Henry Roper, Knight Puisne Justice of the said Court.

The Humble Petition of CHARLES FORBES of Bombay, European Merchant and Inhabitant,

SHEWETH.

That the said David Forbes died in Camp at Kunla in Affghanistan whilst with his Regiment en route from the Bholan pass toward Shikarpoor, on or about the twenty first day of November one thousand eight hundred and thirty nine, having first made and published his last Will and Testament in writing bearing date the Sixteenth day of June, one thousand eight hundred and thirty nine, whereby he appointed Andrew Farquharson of the house of Forbes and Company his agent, which Will is now deposited with the Ecclesiastical Registrar of this Honorable Court, as appears by his certificate hereunto annexed.

That by the exemplification of the letters of administration extracted from the Records of the Prerogative Court of the Archbishop of Canterbury under the seal of the said Court hereunto annexed, it appears that David Forbes, the Father of the said deceased, is appointed administrator with a copy of the said Will annexed of all and singular the goods chattels and credits of the said deceased, limited until the original Will or an authentic copy thereof shall be brought into and left in the Registry of the said Court.

That by the Power of Attorney hereunto annexed your Petitioners, John Bowman and John Grant Malcolmson, are jointly and severally appointed the attornies of the said David Forbes to take all necessary steps for the collecting in and receiving the moneys debts and demands due to the estate of the said David Forbes deceased, in Bombay.

That the said deceased died possessed of the sum of Rupees twenty nine thousand standing to his credit in the books of Messieurs Forbes and Company of Bombay merchants, and of the sum of Rupees thirty thousand invested in Company's paper.

That the said John Bowman and John Grant Malcolmson are not anxious to take upon themselves the burthen of administering to the said estate.

Your petitioner therefore humbly prays that the usual citations may issue to the next of kin and creditors of the said deceased, to shew cause why letters of administration to the said estate and effects of the said David Forbes should not be granted to your Petitioner, for the due administration whereof your Petitioner is ready and willing to give his security as to this Honorable Court shall require

And your Petitioner shall ever pray.

PATCH & BAINBRIDGE,
Petitioner's Proctors.

Affidavit verifying the Petition.

N. B.—*This was not made use of in the second application.*

CHARLES FORBES, of Bombay European merchant and Inhabitant, the Petitioner abovenamed, maketh Oath and saith that the several matters and things stated in the Petition of this Deponent hereunto annexed are true and correct to the best of his knowledge and belief.

CHARLES FORBES.

Sworn at Bombay aforesaid, this fifteenth day of October 1840,

Before me
GEO. ROBERTSON,
Commissioner.

N. B.—The following papers were only used on the second application.

A.

Letter from Mr. Farquharson to Mr. Bainbridge.

MY DEAR SIR,—The accompanying letter, containing a copy of the late Surgeon Forbes's Will, reached me yesterday afternoon. It is not regularly attested but perhaps as a Soldier's Will the court would grant probate of the original—what do you think? I fear however that the requisite reference will occupy too long a time.

8th January 1840. Yours very truly,
(Signed) ANDREW FARQUHARSON.

B.

Bombay, 8th January, 1840.

Reply from Mr. Bainbridge.

MY DEAR SIR,—

I am clearly of Opinion that the Will of the late Surgeon Forbes will be admitted to probate by the Court here. The new Will act does not extend to or affect the Wills of Soldiers in actual military service (Vide Section 11,) so that the 23rd Section of the Statute of Frauds (29 Car 2 c 3) still remains in force.—In order to obtain probate the only proof requisite will be that the testator died in Camp, and that the signature to the Will and (if the fact be so) the Will also are the signature and in the handwriting of the deceased.

I remain,
Yours very truly,
(Signed) C. H. BAINBRIDGE.

A FARQUHARSON, Esq.

C.

Bombay, 9th January, 1840.

DAVID FORBES, Esq.
Newbigging, near Dundee.

Letter from Messrs. Forbes and Co. to David Forbes, Esq. father of the deceased

DEAR SIR.—We with much regret beg to acquaint you of the demise of your son David Forbes, Esq., Surgeon of the 1st Regiment Bombay Light Cavalry, on the 20th November last at Kunda in Affghanistan.

His death has been communicated to us by Capt. J Liddell of that Regt. in a letter dated 17th December 1839, which only reached us on the 7th instant. We annex a Copy of it, also a Copy of your late Son's Will as furnished by Captain Liddell, who has not yet forwarded the original. You will perceive that your late Son by it appoints Mr. Farquharson of our Firm his Executor, but as Probate could not be obtained from the Will not being now here, owing to the time which would elapse before it could reach, and the necessary forms of the Queen's Supreme Court be observed, Mr. Farquharson regrets that he cannot act, as it is his intention to return to Europe very shortly and before Probate could be obtained, under the shortest process.

We would therefore suggest your obtaining Letters of administration to your late Son's Estate from the Prerogative Court of Canterbury, transmitting a duplicate or an exemplification of them to us, or any other parties here whom you may prefer, accompanied by a Power of Attorney, which should contain an authority to administer to your Son's estate with the Will annexed, to supersede the administration of the Ecclesiastical Registrar of the Queen's Supreme Court here, should he administer before your Power arrives, or to apply to the Registrar for payment of the net balance of the assets of the Estate, and to grant him a discharge or release on receipt of them, whichever mode may be found most advisable and least expensive.

You will require to be particularly careful to have the Power of Attorney witnessed by persons whose signatures are known and can be verified by parties residing at this place, without which the papers you may send cannot be acted upon. A notarial certificate or one that the Power was executed in presence of a public authority would be of no use.

We would suggest to you to put yourself in communication with our agents in London, Messrs. Forbes, Forbes and Co. of King William Street, who will assist you in obtaining, through their Solicitors, the necessary documents.

Your son has left in our hands East India Company's securities amounting to Sicca Rs. 30,700 of different Loans, and a Cash balance of about Company's Rupees 20,900. We are not aware of what other property he was possessed in this country, but probably it amounts to only a small sum, and we are inclined to think only consists of his personal effects. In forwarding the necessary documents you should give instructions as to the remittance of the proceeds of the Estate.

We remain,
dear Sir,
your most obdt. servants,
FORBES AND Co.

D.

MESSRS. JAMES FORBES and CO.
Bombay.

Dundee, April 11, 1840.

Letter from Messrs. Shiell and Small to Messrs. Forbes and Co.

GENTLEMEN,—Mr David Forbes has employed us to attend to his interest in the affair of his Son David Forbes. He has handed to us your letter of the 9th January last, and we, as recommended by you, put ourselves in communication with your London friends. We are procuring Letters of Administration which will be expede forthwith, and the Power of Attorney sent out as you desire. We sincerely hope Mr. Farquharson may be enabled to act in the matter in the mean time.

Mr. Forbes and his daughters are naturally anxious to have forwarded to them (to our care) all their relative's Books, Papers, Watches, Trinkets and other moveables which can possibly be forwarded this distance, and they will trust to your kind offices in this respect:—they are further very desirous to have any additional particulars as to the illness, death and burial of Dr. Forbes. We have taken the liberty of addressing a letter to Captain Liddell upon the subject, and of enclosing it to your care to be forwarded to him.

We beg your good services in looking after the property and effects left by the Dr. There was a sum of prize money to which he was entitled but his friends do not know if he had received it. He had also contributed long to the Fund, and had he survived his return, he would have been entitled to three years pay, never having had leave of absence—you will please act for the best, as we have the fullest confidence in your House, whose highly esteemed character is known here. We will thank you on receipt of this to write us the state of matters.—We will again write you with the Power of attorney which we are to forward through Messrs. Forbes, Forbes and Co.

We remain,
Gentlemen,
Your most obdt. servants,
(Signed) SHIELL and SMALL.

E.

MESSRS. FORBES AND Co.
Bombay.

Dundee, August 5th, 1840.

Letter from same to same.

GENTLEMEN,—We have now procured letters of administration by Mr David Forbes, Newbigging near Dundee, with his Son's Will annexed. We have also prepared and got executed by Mr. Forbes a Power of Attorney. These documents we now beg leave to inclose through your friends Messrs. Forbes, Forbes and Co. of London. In case of accident we have sent

u also an attested copy of the letters of administration and Power of Attorney under the hand of a Notary Public. The attesting Witnesses to the Power are Mr. William Colville of Laws near Dundee, and a Partner of the House of Messrs. Colville, Gilmore and Co. Calcutta, and Capt. James Neish of Dundee, formerly of Bombay. We hope these Gentlemen's Signatures will be known, and that every thing will be found correct

Dr Forbes's Sisters are still very anxious to get some additional particulars of their Brother's death from Capt. Liddell, and if you can be instrumental in this matter, we will be indebted to you. We will trust to your highly respectable House to realize and remit the Estate as speedily as possible. We leave you to decide upon the best method of doing so. Our friends would wish all the portable articles which belonged to their Brother sent home; and as their hearts seem much set on this, we will thank you to get it attended to. Dr. Forbes was on active duty, and prize money may be due;—you will please attend to this. He also contributed to the Fund, but this fell, we believe, on his death.

We remain, Gentlemen, very respectfully
Your most obedient servants,
(Signed) SHIELL & SMALL.

F.

DEESA, *3rd Sept.*, 1840.

Letter from Capt. Liddell to Messrs. Forbes and Co.

DEAR SIRS,—The remittance alluded to in your letter of the 18th ultimo of Rs. 52-0-0 was made by me on account of Captain James Pope, of the 17th Regiment N. I., which ought to have been advised by him.

In reference to your letter of the 18th January last, I now beg to enclose to your care the last Will and Testament of the late Dr. Forbes, which I had no opportunity of forwarding from Scind, and I did not consider it sufficiently safe to entrust it in the Post through that country. I also enclose a certificate of his having died in Camp when the Regiment was on its march from the Bolan Pass to Shikarpoor. Please let me know if an order and note copied into Dr Forbes's account Book addressed to Captain N. Erskine, dated 18th November, apparently just written before he was taken ill, was paid by you to the order of that officer, and whether it has been again repaid by him to your House or not, as the Note requested it might be. I have long ago addressed Captain Erskine on this subject, but have as yet received no answer from him regarding it, the order was for Rs. 300 Dr. Forbes was entitled to six months' Batta, which cannot be drawn with the Regiment in consequence of his death, but must be claimed by his heirs or assigns agreeable to G. O.; have the goodness to let me know if any document will be required from his heirs at home or not, as I will have occasion to write them by next Steamer and could let them know what was required to get the sum, amounting to Rs. 1095, recovered for the estate. His friends have desired me to forward a few articles and papers to your care, which I will do as soon as opportunity occurring, or the opening of the &c.

I remain,
dear Sirs,
Your most obdt. servant,
(Signed) JAS. LIDDELL.

To Messrs. FORBES AND Co.
Bombay.

G.

I do hereby certify, that the late David Forbes, Esq., Surgeon 1st Regiment Light Cavalry, died in Camp at the Village of Kunda on the 21st of November 1839, whilst the Regiment was en route from the Bolan Pass towards Shikarpoor.

(Signed) JAS. LIDDELL,
Captain, 1st Regt. L. C.

DEESA, *3rd Sept.*, 1840.

Joint affidavit of C. H. Bainbridge, William Baxter, and John Bowman.

CHARLES HARDY BAINBRIDGE of Bombay, Gentleman, one of the Proctors of this Honorable Court, and the Proctor for the above named Petitioner WILLIAM BAXTER of Bombay, Gentleman, and head Clerk in the house of Messrs. Forbes and Company of Bombay Merchants, & JOHN BOWMAN of the same place Merchant, one of the Partners in the said firm of Messieurs Forbes and Company severally make Oath and say, and first this Deponent Charles Hardy Bainbridge for himself saith that on the eighth day of January last he received from Mr Farquharson, then one of the partners in the said firm of Messieurs Forbes and Company, the letter hereunto annexed, marked with the letter A, which is in the handwriting and under the signature of the said Mr. Farquharson, and that the letter therein referred to as containing a copy of the late Surgeon Forbes's Will and the said copy of the Will purported to be under the Signature of James Liddell, a Captain in the First Regiment of Light Cavalry in the service of the Honorable East India Company, and that the said copy Will was returned on the same day to the said Mr Farquharson with the letter under the signature of this Deponent whereof a copy is hereunto annexed marked with the letter B. AND this Deponent William Baxter for himself saith that the letter hereunto annexed marked with the letter C, is in the handwriting of Andrew Farquharson formerly one of the Partners in the said firm of Messieurs Forbes and Company, and is the draft of a letter which was forwarded under the Signature of the said Messieurs Forbes and Company to David Forbes, Esq., the Father of the abovenamed deceased, by the Honorable Company's Steamer *Atalanta* which left Bombay with the overland mail for England on or about the Thirty first day of January last, and that in the said letter was enclosed a writing purporting to be a copy of the Will of the abovenamed deceased under the Signature of the said James Liddell who was acting Major, on the effects of the above deceased in Camp; and this Deponent further maketh Oath and saith, that on the Eighth day of July last the said firm of Messieurs Forbes and Company received the letter from Messieurs Shiell and Small hereunto annexed marked with the letter D by the overland mail from England, and that on the tenth day of October last they received another letter by the overland mail from England from the said Messieurs Shiell and Small which is hereunto annexed marked with the letter E. AND this deponent John Bowman for himself saith that the said firm of Messieurs Forbes and Company received through the Bombay Post Office from the said Captain James Liddell, on the Tenth day of September last, the letter hereunto annexed, marked with the letter F, in which was enclosed a paper writing purporting to be the original Will of David Forbes the above named deceased, which is lodged with the Ecclesiastical Registrar of this Honorable Court, as appears by his certificate bearing date the Fourteenth day of October One thousand Eight hundred and Forty already filed of Record on the Ecclesiastical Side thereof, and also the certificate of the death of the said David Forbes hereunto annexed, marked with the letter G; and this Deponent William Baxter for himself further maketh Oath and saith that to the best of his information, knowledge, and belief, the said David Forbes departed this life with his Regiment in camp, and when in actual military service at Khunda whilst his Regiment was proceeding from the Bholan Pass to Shikarpoor on or about the Twenty-first day of November, in the year One thousand Eight hundred and Thirty nine possessed of property within the Jurisdiction of the Honorable court consisting of Rupees Thirty thousand or thereabouts in the East India company's paper, and the sum of Rupees twenty three thousand and upwards in the hands of the said Messieurs Forbes and Company.

C. H. BAINBRIDGE,
W. BAXTER,
JOHN BOWMAN.

Sworn at Bombay aforesaid this Thirty first day of October 1840, by the Deponents the said C. H. Bainbridge, W. Baxter and John Bowman,
Before me
O. W. KETTERER,
Commissioner.

Affidavit of Captain Stockley.

HENRY STOCKLEY, a Captain in the Seventh Regiment of Native Infantry, and Sub Assistant Commissary General in the Service of the Honourable East India Company on their Bombay Establishment, maketh Oath and saith, that he is well acquainted with the hand writing and signature of the above named David Forbes, deceased, from having been on very intimate terms with him in his life time, and from having been in frequent correspondence with him, and from having acted upon his letters; and that on the Thirty first day of October last he, this Deponent, attended at the office of Spencer Compton, Esquire, the Ecclesiastical Registrar of this Honorable Court, and carefully examined a certain paper writing which he was informed by one of the Purvoes in the said office was the paper writing deposited by Mr. Bainbridge one of the Proctors of this Honorable Court, as the last Will and Testament of the above named David Forbes, and this Deponent saith that the same is to the best of his knowledge, information and belief, in the handwriting and under the signature of the said David Forbes.

HENRY STOCKLEY,
Sub Asst. Comy. Genl.

Sworn at Bombay aforesaid, this second day of November 1840,
Before me.
O. W. KETTERER,
Commissioner.

(Signed) PATCH AND BAINBRIDGE.

Second affidavit of Captain Stockley.

HENRY STOCKLEY, of Bombay, Sub Assistant Commissary General, and a Captain in the Seventh Regiment Native Infantry, in the Service of the Honorable East India Company on their Bombay Establishment, maketh oath and saith, that the above named David Forbes was in his life time a Surgeon in the Honorable East India Company's Service on their said Bombay Establishment, and that throughout the whole of the month of June One thousand Eight hundred and Thirty-nine, and also at the time of his decease, he was in actual Military service attached to the first Regiment of Light Cavalry on the said establishment and doing duty therewith as such Surgeon as aforesaid, to the best of this deponent's knowledge and belief.

(Signed) HENRY STOCKLEY,

Sworn at Bombay aforesaid, this Seventh day of November 1840,
Before me
O. W. KETTERER,
Commissioner.

(Signed) PATCH AND BAINBRIDGE.

Affidavit of Henry Fawcett, Esq.

HENRY FAWCETT, of Bombay, Esquire, one of the partners in the firm of Messieurs Remington and Company, of the same place Merchants, maketh Oath and saith that he is well acquainted with the signature and handwriting of James Liddell, a Captain in the First Regiment of Light Cavalry, in the service of the Honorable East India Company on their Bombay Establishment, from having frequently seen him write and sign his name, and that the two several paper writings hereunto annexed respectively marked with the letters F. and G. are to the best of this Deponent's knowledge and belief, in the handwriting and under the signature of the said James Liddell.

H. FAWCETT.

Sworn at Bombay aforesaid the Thirty-first day of October 1840,
Before me
O. W. KETTERER,
Commissioner.

(Signed) PATCH AND BAINBRIDGE.

To

THE HONORABLE SIR JOHN WITHER AWDRY, *Knight, Chief Justice*, and THE HONORABLE SIR HENRY ROPER, *Knight, Puisne Justice of the said Court*,

The Humble Petition of CHARLES FORBES, Bombay European Merchant and Inhabitant,

SHEWETH,

Petition used on the second occasion.

That the said David Forbes died in Camp at Kunda in Affghanistan whilst with his Regiment on actual Military service on his road from the Bolan Pass towards Shikarpoor on or about the Twenty-first day of November one thousand eight hundred and thirty nine, having first made and published his last Will and Testament in writing, bearing date the sixteenth day of June, one thousand eight hundred and thirty nine, whereby he appointed Andrew Farquharson, late a Partner in the House of Forbes and Company of Bombay Merchants, his Agent to see the same carried into effect, which Will is now deposited with the Ecclesiastical Registrar of this Honorable Court, as appears by his Certificate filed with him of record.

That by the exemplification of the letters of administration extracted from the records of the Prerogative Court of the Archbishop of Canterbury, under the Seal of the said Court hereunto annexed, it appears that David Forbes, the Father of the said deceased, is appointed administrator with a copy of the said Will annexed of all and singular the goods chattels and Credits of the said deceased, limited until the original Will or an authentic copy thereof shall be brought into and left in the Registry of the said Court.

That by the Power of Attorney hereunto annexed your Petitioner John Bowman and John Grant Malcolmson are jointly and severally appointed the Attornies of the said David Forbes to take all necessary steps for the collecting in and receiving the moneys, debts and demands due to the estate of the said David Forbes deceased, in Bombay.

That the said deceased died possessed of the sum of Rupees twenty three thousand or thereabouts standing to his Credit in the Books of Messieurs Forbes and Company of Bombay Merchants, and of the sum of Rupees thirty thousand or thereabouts invested in Company's paper.

That the said John Bowman and John Grant Malcolmson are not anxious to take upon themselves the burthen of administering to the said Estate.

Your Petitioner therefore humbly prays that the usual Citations may issue to the next of kin and Creditors of the said deceased, to shew cause why letters of Administration with the Will annexed to the said estate and effects of the said David Forbes should not be granted to your Petitioner, for the due administration whereof your Petitioner is ready and willing to give such security or securities as this Honorable Court shall require.

And your Petitioner shall ever pray

(Signed) PATCH & BAINBRIDGE.

9th January, 1841.

OBSERVATIONS OF SIR H. ROPER.

The slovenly manner in which the Petition and the Petitioner's affidavit have been framed would alone be sufficient to preclude me from granting this application. The Petition states that the deceased by his will appointed Mr. Farquharson of the House of Forbes and Co. *his Agent*. Query.—Was it intended to have written "Andrew Farquharson of the House of Forbes and Co. his agent to be his executor." However this may be with reprehensible carelessness on the part of Mr. Forbes and his Proctor, Mr Forbes swears in general terms to the truth of the facts mentioned in the slovenly petition. Independently of this a general affidavit of this kind will not be considered by me as sufficient without strong authority to prove it so.

In general, where probate or administration is duly granted by the Prerogative Court of Canterbury, this Court will grant administration or probate to the same person who has obtained the Prerogative grant, or to his Attorney if it be duly applied for. In this case, however, I cannot but suspect the grant of administration with the copy of the Will annexed, has been improperly obtained and by means of some *malpractice*. In the first place, I am not at present aware of any instances in which administration, with a copy of a Will annexed, has been granted, unless where the original Will has been lost and a copy has thus become admissible as evidence of the original, or where the original Will has first been duly proved in one Court, and such original being deposited in that Court, a copy duly authenticated has been transmitted in order to probate or administration with such copy annexed being obtained elsewhere. In this instance, according to the tenor of the Will it would seem that all the property of the Testator was in this country, therefore the Will which was at Bombay or in India should have been proved here in the first instance, and then if a Prerogative probate became necessary, an authenticated copy might have been transmitted to England. As already observed, it would seem that the Testator had all his property in India, and yet the prerogative grant of administration recites in the usual form it had been alleged that the deceased in his life time and at his death had goods, chattels or credits, in divers dioceses or jurisdictions sufficient to give jurisdiction to the Prerogative Court. If all the assets of the Son were in India at his death, I cannot comprehend how the proctor could reconcile such an allegation, though almost mere form, with his conscience, unless indeed Forbes and Co. of Bombay had remitted to London the assets of the deceased which they had in their hands at his death, without having proved the Will or taken out Administration, and unless the Proctor in ignorance or false reasoning had construed such circumstances into sufficient ground for the jurisdiction of the Prerogative Court. In any further application on behalf of Mr Forbes regarding this Will, I shall expect that these matters be cleared up, and that it be expressly shown whether the assets left in the hands of Forbes and Co. have been at any and what time transmitted to England, whether any authority was given by Forbes and Co. to their correspondents in England to pay to the legatees or any of them any and what sum or sums of money on account of the administration of the deceased estate.

Another badge of ignorance or *Malpractice* in this matter is, that the grant of administration from the prerogative Court states it is alleged the deceased did not in his said Will name any residuary legatee, whereas according to the annexed copy of the Will he expressly names his Father as residuary legatee, and such residue would be considerable it being pretty clear that the 30,000 Rupees stated in the Petition to be invested in Company's paper was considered by the Testator as in the hands of Forbes and Co., they no doubt having the Notes or papers in their custody. Looking at all these circumstances I strongly suspect the prerogative grant of administration was obtained unduly and by malpractice through the inattention or connivance of the officers of the court, and without the facts having been brought to the notice of the Court. This application is for administration generally, not for administration with the Will annexed, and is therefore altogether erroneous. As the original Will is here it must be proved. We can have nothing to do with the copy or with the copy of the copy obtained from the Prerogative Court. The executor renouncing or being out of the jurisdiction the Registrar would be entitled to administer, but the father of the deceased is next of kin and residuary legatee, and thus were he present would be entitled preferably to the Registrar. Though not present he has sent a power of attorney authorizing the Petitioner, not indeed to take out administration with the Will annexed, but to act on his behalf in collecting and administering the estate. The statute 55 Geo. 3, c. 84, gives a discretionary power to the Court, the words being "or any other sufficient authority to be shown to the satisfaction of the said Court"—therefore I think in this instance, if an application be duly made, administration with the Will annexed may be granted to Mr. Charles Forbes;—whether the Court would allow him to take commission must depend upon circumstances, viz. The conduct of Forbes and Co in this matter:—the decision on that point will not rest with me, but must be determined by the full Court.

The power of Attorney is proved by the affidavit of Cursetjee Jamsetjee as to the hand writing of Neish one of the attesting witnesses. The andavit of Neish, and the seal of the Dundee Magistrate, are utterly useless.

To

THE HONORABLE SIR HENRY ROPER, *Knight*,
Puisne Justice of the Supreme Court
of Bombay.

MY LORD.—In the Month of October last a petition was presented to your Lordship on behalf of CHARLES FORBES, Esq. a Member of the firm of Messrs. Forbes and Company, Merchants praying that letters of administration might be granted to him of the estate of the late David Forbes, of the Bombay Medical establishment, which your Lordship in the first instance refused for certain reasons written by your Lordship upon the said petition, and now recorded in the office of the Ecclesiastical Registrar.

The grounds upon which your Lordship objected to granting the application are stated in your Lordship's hand writing to have been, that your Lordship entertained certain suspicions of malpractice, which must necessarily have been subsequently removed, from the fact, that upon another application your Lordship concurred with his Lordship the Chief Justice in granting the original prayer of the Petition, but notwithstanding such final order was made, the Petition remains of record in the Supreme Court, containing on the face of it an expression of suspicions entertained by your Lordship, injurious to those to whom such malpractice was ther in attributed.

Messrs. Forbes and Company feeling themselves aggrieved by the publicity given to the observations of your Lordship, founded upon such suspicions, have instructed us to apply to the Court, that the Petition now on record may be replaced by another in the same language and form, but without your observations, and have accordingly sanctioned our apprising your Lordship, that such an application will be made on the first special motion day in the ensuing term.

With great respect
We remain,
your Lordship's
most obedt. servants,
(Signed) PATCH AND BAINBRIDGE,
Solicitors Supreme Court.

Rampart Row, 6th Feb. 1841.

IN THE SUPREME COURT OF JUDICATURE AT BOMBAY.

ECCLESIASTICAL SIDE

In the matter of the administration with the Will annexed, of David Forbes Esq. late a Surgeon in the First Regiment of Light Cavalry, in the Service of the Honorable the East India Company on their Bombay Establishment, deceased.

CHARLES FORBES, of Bombay European Merchant and Inhabitant, Petitioner.

To the Honorable Sir JOHN WITHER AWDRY, *Knight*, Chief Justice of the Supreme Court of Judicature at Bombay, and the Honorable Sir HENRY ROPER, *Knight*, Puisne Justice of the said Court.

The humble Petition of the above named CHARLES FORBES

SHEWETH,

That on the Eighth day of October, one thousand eight hundred and forty, your Petitioner presented to this Honorable Court on the Ecclesiastical side thereof, a Petition, praying that citations might be issued to the next of kin and creditors of the said deceased, to shew cause why letters of administration of the estate and effects of the said David Forbes, deceased, should not be granted to your Petitioner, for the due administration whereof your Petitioner was ready and willing to give such security as this Honorable Court should require; whereupon, and on hearing evidence read in support of the said Petition, his Lordship Sir Henry Roper the Puisne Justice of this Honorable Court, then sitting in Chambers, directed that the said application should stand over.

That on the Twenty second day of October, one thousand eight hundred and forty, the said Petition having been again brought before his Lordship's consideration in Chambers, but without any further evidence being adduced in support thereof, his Lordship ordered that the said application should again stand over

That on the Third day of November, one thousand eight hundred and forty, Mr. Crawford, the counsel for your petitioner, again moved this Honorable court, that the usual citations might be issued to the next of kin and creditors of the said deceased, to shew cause why letters of administration with the will annexed to the said estate and effects of the said David Forbes, deceased, should not be granted to your petitioner; whereupon, and on reading the evidence in support thereof, your Lordships ordered that the application should again stand over in order that your petitioner should shew by affidavit, that the deceased was a Surgeon in the service of the Honorable the East India Company, and on actual military service at the time of his decease.

That on the Ninth day of November one thousand eight hundred and forty, your petitioner's counsel, Mr. Crawford, appeared again before your Lordships on behalf of your petitioner; whereupon, and on reading an affidavit of Captain Henry Stockley, it was ordered by this Honorable Court, that citations to the next of kin and creditors of the said deceased should issue to appear before this Honorable Court, and shew cause, if any they had, why letters of administration with the last will and testament annexed to the estate and effects of the said deceased should not be granted to your petitioner on his giving the usual securities for the due administration thereof, as in and by the said petition now filed of record in this Honorable Court, and the certificate of the Registrar of this Honorable Court, dated the Ninth day of November, one thousand eight hundred and forty, to which your petitioner craves leave to refer when respectively produced will appear.

That on the Twenty first day of December, one thousand eight hundred and forty, upon motion of your petitioner's counsel on behalf of your petitioner, and on reading the registrar's certificate of proceedings, dated the Nineteenth day of December, one thousand eight hundred and forty, it was ordered by this Honorable Court, that your petitioner should be sworn to his trust, and that thereafter the letters of administration with the last will and testament of the said deceased thereto annexed, should be granted to your petitioner, under the seal of this Honorable Court, as in and by the certificate of the said registrar, to which your petitioner craves leave to refer when produced will appear.

That on the said Twenty second day of October, one thousand eight hundred and forty, when your petitioner's said petition was again brought before this Honorable court, his Lordship Sir Henry Roper read aloud in the presence of several persons who were then attending in chambers, certain observations which his Lordship had previously written on the said petition, and which observations are in the words and figures, or to the purport and effect following, that is to say—

"The slovenly manner in which the Petition and "the Petitioner's affidavit have been framed, would "alone be sufficient to preclude me from granting "this application. The Petitioner states, that the de- "ceased by his Will appointed Mr. Farquharson, of "the House of Forbes and Co., his agent. Query— "Was it intended to have written Andrew Farquhar- "son, of the House of Forbes and Co., his agent, to be "his executor? However this may be with re- "prehensible carelessness on the part of Mr. Forbes and his "Proctor, Mr. Forbes swears in general terms to the "truth of the facts mentioned in the slovenly Peti- "tion: independantly of this, a general affidavit of this "kind will not be considered by me as sufficient, "without strong authority to prove it so.

"In general, where probate or administration is "duly granted by the Prerogative Court of Canter- "bury, this Court will grant administration or probate "to the same person who has obtained the Prerogative "grant, or to his attorney, if it be duly applied for. In "this case, however, I cannot but suspect the grant of "administration with the Copy of the will annexed "has been improperly obtained, and by means of some "malpractice. In the first place, I am not at present "aware of any instance in which administration "with a copy of a Will annexed has been granted, "unless where the original will has been lost, and "a copy has thus become admissible as evidence of "the original; or where the original Will has first

"been duly proved in one Court, and such origina
"being deposited in the Court a copy duly au-
"thenticated has been transmitted in order to probate
"or administration with copy annexed, being ob-
"tained elsewhere. In this instance, according to the
"tenor of the Will, it would seem that all the property
"of the Testator was in this country. Therefore the
"Will which was at Bombay (or in India) should
"have been proved here in the first instance, and then
"if a Prerogative probate became necessary, an
"authenticated copy might have been transmitted
"to England. As already observed, it would seem that
"the Testator had all his property in India, and yet he
"Prerogative grant of administration recites in the
"usual form, it had been alleged that the deceased to
"his life time and at his death had goods, chattels in
"credits in divers diocese, or Jurisdiction sufficient or
"give Jurisdiction to the Prerogative Court. If all
"the assets of the son were in India at his death. I
"cannot comprehend how the proctor could recon-
"cile such an allegation, though almost mere form,
"with his conscience, unless indeed Forbes and Co. of
"Bombay, had remitted to London the assets of the
"deceased which they had in their hands at his death,
"without having proved the Will or taken out admi-
"nistration and unless the proctor in ignorance or false
"reasoning had constructed such circumstances into
"sufficient ground for the Jurisdiction of the Preroga-
"tive Court. In any further application on be-
"half of Mr. Forbes, regarding this Will, I shall ex-
"pect that these matters be cleared up, and that it
"be expressly shown, whether the assets left in the
"hands of Forbes and Co. have been at any and what
"time transmitted to England—whether any authori-
"ty was given by Forbes and Co. to their correspond
"ents in England, to pay to the legatees or any of
"them, any, and what sum or sums of money
"on account of the administration of the deceased's
"estate.

"Another badge of ignorance or malpractice in
"this matter is that the grant of administration from
"the Prerogative Court states, it is alleged the de-
"ceased did not in his said will name any residuary
"legatee, whereas according to the annexed copy of
"the will he expressly names his father as residuary
"legatee, and such residue would be considerable, it
"being pretty clear, that the 30,000 Rupees stated in
"the petition to be invested in Company's paper was
"considered by the Testator as in the hands of Forbes
"and Co—they no doubt having the notes or
"papers in their custody. Looking at all these cir-
"cumstances I strongly suspect the prerogative grant
"of administration was obtained unduly and by mal
"practice, through the inattention or connivance of
"the officers of the court, and without the facts hav-
"ing been brought to the notice of the Court This
"application is for administration generally, not for
"administration with the will annexed, and is there-
"fore altogether erroneous. As the original will is
"here, it must be proved; we can have nothing to do
"with the copy or with the copy of the copy obtained
"from the Prerogative court. The executor renouncing
"or being out of the Jurisdiction, the Registrar would
"be entitled to administer; but the father of the de-
"ceased is next of kin and residuary legatee, and thus,
"were he present, would be entitled preferably to the
"Registrar. Though not present, he has sent a power
"of attorney authorising the Petitioner not indeed
"to take out administration with the will annexed,
"but to act on his behalf in collecting and admi-
"nistering the estate. The statute 55 Geo 3, C 84,
"gives a discretionary power to the court, the words
"being "or any other sufficient authority to be shown
"to the satisfaction of the said court." Therefore
"I think in this instance, if an application be duly
"made, administration with the will annexed may
"be granted to Mr. Charles Forbes; whether the
"court would allow him to take commission must
"depend upon circumstances, viz. The conduct
"of Forbes and Co. in this matter. The decision
"in that point will not rest with me; but must be
"determined by the full court.

"The power of attorney is proved by the affidavit
"of Cursetjee Jamsetjee, as to the hand writing of
"Neish, one of the attesting witnesses. The affida-
"vit of Neish, and the seal of the Dundee Magis-
"trate, are utterly useless." As in and by the said observations filed of record in this Honorable Court, together with the said Petition, and to which your Petitioner craves leave to refer when produced will appear.

That your Petitioner individually, and as a member of the firm of Forbes and Company feels himself aggrieved, by having such observations written by the hand of His Lordship, Sir Henry Roper, on the said original Petition, and recorded therewith, for the following amongst other reasons.

Firstly—Because your Petitioner is advised, that it is contrary to the established Custom of Her Majesty's and other Supreme Courts of Justice, as well as of this Honorable Court, for any Judge thereof to write his Order, Judgment, or Decree, on the face or in the body of an original record of the Court.

Secondly—Because the observations of the Honorable Judge which your petitioner has hereinbefore recited, must as your Petitioner submits, be considered merely in the light of an interlocutary order, and not being or purporting to be in any degree final or conclusive, or supported by the facts; the same ought not, as your Petitioner apprehends, to be recorded in the manner aforesaid with the said original Petition.

Thirdly—Because the suspicions which his Lordship in his said written observations professed to entertain of malpractice, and of the conduct of your Petitioner and of the other members of the Firm of Forbes and Company, were, as your petitioner submits, unfounded, among other reasons from the fact, that your Lordships, on the production of the further evidence called for, subsequently concurred in granting your Petitioner's application, which your Petitioner humbly apprehends His Lordship Sir Henry Roper would not have done, or been justified in doing, if those suspicions had continued to exist.

And Fourthly—Because by the continuance of the aforesaid observations upon the said record, the fact of such suspicions having been entertained by His Lordship, Sir Henry Roper, appears upon the files of this Honorable Court, whereas your petitioner has no record or entry filed in this Honorable Court to refer to, directly or specifically, proving or establishing the removal of such suspicions from the mind of His Lordship; and your Petitioner is thereby precluded from referring to the records of this Honorable Court for any direct and explicit disproof herefore of the grounds upon which the same had been entertained.

Your Petitioner therefore humbly prays your Lordships, that the Registrar of this Honorable Court may be ordered to take your Petitioner's said Petition, together with the aforesaid observations in writing of His Lordship, Sir Henry Roper, off the files of this Honorable Court, and to replace the same by filing the said Petition alone, or a Verbatim Copy thereof, without the said observations written or Copied upon the same, or that your Lordships will be pleased to make such further or other order herein, as the circumstances of the case may require, and to your Lordships shall seem meet.

And your Petitioner shall ever pray, &c.

11*th Feb.* 1841.

Re FORBES.

MR. COMPTON read the Petition—On coming to the statement as to the 2d application at Chambers (the end of the 2d paragraph.)

ROPER, J. observed—There is an error in your Petition. I refused the application altogether on the 2d application at Chambers. My opinion was that this document had been unduly obtained, that there had been malpractice, I don't mean fraud or swindling, but gross irregularity, and with some subtle object in view in obtaining it. If Forbes and Co. had been guilty of misconduct, I thought it would be a question for consideration whether they should be entitled to take out administration. I do not think the Court is bound to allow a commission, but it has been the practice to do so, and that practice is recognized and acted upon at home, and allowance is accordingly made in passing the account, but circumstances might justify the Court in withholding the allowance and (under the extraordinary circumstances of this case) I thought the question would arise, whether Messieurs Forbes and Co. should be allowed their commission in this estate. I have the words I used (His Lordship read here his judgment which is set forth in the petition.) I thought the application should be refused, and a new application made, and pointed out the matters which I should require to be explained and cleared up It stated my suspicion, that there were no bona notabilia within the jurisdiction of the prerogative Court. That suspicion now amounts to a conviction arising from the words of the Will itself, and from the circumstance (which I was not then aware of) that the probate was under £20, the amount under which no stamp is necessary.

REGISTRAR—Continues the Petition.

ROPER J.—Here I would again observe upon the wording of this Petition, verified by the general affidavit of Mr. Charles Forbes—" Dr. Forbes died at Candahar while with his regiment *en route* to the Bolan pass," as if this species of Babylonish Dialect was to be admitted in documents verified by affidavits! Here are matters of law and matters of fact all through jumbled up together, which Mr. Forbes thinks proper to swear to.

REGISTRAR—Proceeds with the Petition to the end of the third ground of the Motion, when,

ROPER J.—When the application was brought forward a second time I refused it. I should not have granted it. I presumed at first the original Will had been produced (he here re-reads his observations from " as the Will is here it must be proved.") It is a mis statement and a gross misconstruction of what I said, to say that in acceding to grant administration to Mr. Forbes, I altered my opinion, I have altered my opinion, as to any part of the assets having been sent home as I find the letters are granted under £20.

THE REGISTRAR—Continues with the Petition, and then began to read, at Mr. Crawford's request, certain Letters filed with the proceedings, when,

ROPER, J.—I dont like objecting to your reading any documents you like, but according to my opinion in this most extraordinary and I may say impudent application, you should only read those matters which formed the ground of the motion on which I made the observations objected to. Your statement in your petition that I had altered my opinion is a misstatement, as I certainly meant to refuse the application when you made it a second time altogether, and when I found that neither you nor the proctor who instructed you attended, when I read the observations, I think I told the Registrar to draw up an order refusing the application altogether.

MR. CRAWFORD—My Lord, I think I was sitting on the right hand of your Lordship when you read the observations.

ROPER J.—I read them before. It was the second time when you were present, and the Registrar has endorsed on the Brief "*refused.*" But however the question is not whether my observations were right or wrong; you must shew grounds on which you can get the petition with those observations upon them off the File. If you had come forward on different grounds as on the ground of any irregularity in the Petition I should not, for reasons I shall explain presently, have said any thing; but as you come forward to take them off the File on the ground of observations made by me upon them, and as your application is an attack upon me, I shall not compromise the matter, but am prepared to give reasons for those observations, and to support the view I have taken of this case. But however you may read any thing you like.

AWDRY, C. J.—I am not prepared to say that these Documents are admissible.

ROPER. J.—Never mind, I do not object to any thing being read.

AWDRY, C J.—But have you any authority in support of your present motion. It seems to me that the proposition for which you must contend is whether it is improper for a Judge to write observations upon the proceedings on which he gives Judgment—now he writes his Fiat on giving Judgment on the record, and as he may give a special Judgment, it would seem prima facie, it is competent for him to write such special Judgment on the original record. I dont say this in order to put you down or stop you in any observations you may wish to make, but that you may see and the more easily meet and remove the impression on my mind.

CRAWFORD—I would not wear this gown or sit in this court if I could be guilty of making disrespectful observations upon any thing that fell from either of your Lordships, but I must speak what my Client intructs me to say.

AWDRY, C. J.—The question seems to frame itself into this proposition, whether, if the grounds of a Judge's Judgment on a Petition are such as if irrelevant or not uttered on a justifying occasion would be defamatory or injurious to the petitioner, he may write them on the original. It seems to require direct authority, or argument founded on authority, to decide that he may not, for the regular way of giving Judgment is for the Judge to write his Fiat. It is competent to give Judgment with reasons, and amongst the practices the most unconstitutional (adopted I think by J. Field or some of the Judges between the revolution and the restoration) was the discontinuing to give reasons for their Judgment, so as to evade the responsibility which the constitution attached to them. I do not say that it is correct to give an unfavorable Judgment at length, but as connected with the practice of granting Fiats and of giving reasons for Judgments, it involves an important point of constitutional Law. I would not take you by surprise. I would rather defer till next special motion day, to give you time to consider this view of the case, than make you argue it hastily.

CRAWFORD.—I did not come to trouble your Lordships with any arguments or to make any observations, but I simply wish to read the Papers and leave the matter in your Lordships' hands.

ROPER. J.—I shall not think it any disrespect in counsel arguing on objections to my conduct. But I should wish, and I am sure his Lordship the C. J. would wish, to be referred to some case. I remember on a former occasion, when I was very anxious to get some observations of the Judge off the Original proceedings, I searched most diligently, but was unable to find any case on which I could ground an application against a Judge's reasons being stated on an Original Document of a much more solemn nature. I have an Opinion of my own but I gave up the search. If there is any Case I shall be most happy to be referred to it.

AWDAY, C. J.—Mr. J. Roper has called my attention to the case to which he refers. I remember I have on some occasions (but if I was wrong then I may be wrong now), when questions on matters of Evidence have been taken down with a view to appeal, directed the Prothonotary to record the reasons of my decision on the Original record of the proceedings, I have done this on more occasions than one.

THE REGISTRAR continues to read the Letters.

ROPER, J.—Were these filed?—They were not mentioned, but that is not of the slightest importance—I think I asked some thing about French being in the Petition, and you gave me a verbal answer.

CRAWFORD.—They were filed when it came before the full Court.

MR. CRAWFORD addresses the Court.

Reads part of Mr. Farquharson's letter recommending Mr. Forbes to apply for and send letters of Administration to "us or any other parties you may prefer."

The sole object of my client is, that the paper which is now on the Files of the Court, of which any persons may take copies, and are to his prejudice, containing suspicions of Facts which, in subsequent discovery are only suspicions, and are on examination afterwards set a side and removed, should not remain to furnish such grounds of suspicion and charges of impropriety and misconduct against him.

1st. The observations attach malpractice and misconduct of Messieurs Forbes and Co. The charge of malpractice is serious and calculated to be injurious. The conduct is brought unfavorably before the public, at a sitting at chambers where many people are present at the bar,—attornies, and purvoes. They wish to remove these suspicions which any person can have access to by obtaining search of the books at the office of the Registrar, and they now shew that there was no management on the part of Mr. Farquharson or any of the other Members, for Mr. Farquharson writes to the deceased's father. Mr. Farquharson foregoes the appointment as Executor as he is going home, but recommends the father to appoint his house or any one else. Look at the Proctors' letter. They were ignorant of matters in India. Forbes and Co. had had experience in these matters and they recommended their house at home—Messieurs Small and Co. actually refer in their letter to a claim on the Military Fund. Now we all know no deceased officer can have a claim on the Fund—Forbes and Co. therefore recommended their own agents: with respect to any feelings as to commission, Mr. Forbes only wishes to have his conduct justified. There were grounds of suspicion. The affidavit was, I admit, irregular and improper. I should not think of supporting it, or insult your Lordships by attempting to support it.

But is Mr. Charles Forbes to remain under such imputations if he can remove them? He is under a serious responsibility and so am I. There was no other mode of proceeding but this—No means of personally proceeding against Sir Henry Roper. The Court afterwards granted administration, and therefore indirectly admits there is no imputation on his conduct.

ROPER. J.—No; we grant administration to Mr. Charles Forbes as attorney, nothing is disproved as to their conduct.

CRAWFORD.—There is nothing as to Mr. Farquharson.

ROPER, J.—That reminds me of what I read in a Magazine the other day, in an article headed "a gentleman in search of an estate," where the gentleman calls on the attorney and asks him, who is a man of business there? and he says, I dont mean to force my services on any one, but as you may want an agent you will find me a good man of business.

CRAWFORD.—Agent is the term quarrelled with; we all know that no person can be an agent of a deceased person he then becomes executor. Mr. Farquharson thinks himself executor and calls himself so, when he writes home. He is a man of business—as to Mr. Charles Forbes's conduct, as Mr. Justice Roper observes, he is young, newly connected with the Firm, unacquainted with legal matters, and did not know the nature or Form of legal proceedings:—many men of experience, who have lived to an old age, dont know the shape and structure of an affidavit. Here is an affidavit which any man might have sworn. He swears as to facts which he could only know by hearsay, conclusions of law, and other matters of the like nature; but this raises no imputation on his conduct. It may be rash, but the objections were patent.

ROPER, J.—I observed great allowances might be made for his youth and inexperience. If this motion were brought forward in the same spirit I should have no objection to take the petition off the file; but I cannot now compromise the matter, and however his Lordship the Chief Justice might wish to save the feelings of Messieurs Forbes and Co., I apprehend he could not take any observations of mine off the file without my consent. I find in Grant's chancery practice a case with Lord Eldon's signature in the margin—His Lordship the Chief Justice's power may be paramount in this court—and he may therefore remove these observations if he disagrees with me, but a point of Law I deny that he has any right or power to do so—I am treated unfairly in this case—I do not wish to take notice judicially of matters which have occurred elsewhere, but as observations have been made on me acting judicially, and this conduct is followed by a motion like this, I cannot help bringing into the consideration of this matter feelings arising from reports and observations made elsewhere. We have heard a good deal of the high repectability of Messieurs Forbes and Co., but if one's opinion of that is to be deduced from their conduct in regard to wills of British subjects, my experience (and His Lordship the Chief Justice must, after a ten years experience in this country be as cognizant of it as myself) certainly would not lead me to a very favorable conclusion. I will enter into no compromise—you may sugar and honey over your motion as you will—I cannot divest my mind of what this young man has reported elsewhere, and you must be aware of the spirit in which this matter is brought forward, and clothing it in honied words will not alter that.

CRAWFORD—My Lord I have no knowledge of any such spirit. I will not be made the vehicle of private attacks I only know what is stated in the petition. I have not even read (if there are any) the observations in my Brief. I think I have said nothing derogatory to the court or to myself.

ROPER, J.—Certainly not. I do not complain of any observations of yours, but if you could have shewn that this was brought forward in a different spirit, I should have had no objection to acceeding to such an application.

AWDRY, C. J.—My first impression has been given—I feel embarassed in this case. If this motion was made on an affidavit acknowledging the improprieties in the proceedings, and shewing that they were unintentional, and stating that the appearance of these observations on the Files of the Court would be likely to be detrimental to Mr. Forbes, the question would assume a different aspect:—as it stands I certainly feel considerably embarrassed. It is my duty to express my unbiassed Judgment; and though I wish another Judge were sitting on the other side that my judicial opinion should not have so much weight as it has now, I must give my opinion with the weight which I possess alone. Whether I differ or agree with Mr. J. Roper I am thus forced to decide on my own opinion. I confess I greatly doubt the jurisdiction of the Court to grant this application, and even assuming the jurisdiction I doubt much as to the propriety of exercising it, not in the first term, and merely on the evidence before me.—I am not prepared to say I would exercise the jurisdiction on affidavits after the first term.

ROPER, J.—It is a common practice—one which I have frequently adopted—to withdraw papers when an application is refused. But neither counsel nor Proctor were present when I read my judgment, otherwise the Petition might have been withdrawn.

AWDRY, C. J.—Under any circumstances I could not interfere except on affidavit. It seems to me that if I could interfere at all I must be equally bound to do so without Mr. J. Roper's consent—but I could not do so without affidavits. If I could interfere I think it might be for this reason—That what is there is not a necessary part of the Judgment; such remarks might have found their way there by accident. If I could say it was merely accidental (without saying I could therefore remove the original) it would certainly place me in a more favorable position. This is a peculiar case. I am sorry that the character of Mr. Charles Forbes, and of the house of which he is a member, should suffer from the access of the public to the records of this court. The subsequent decision of the court granting administration on distinct grounds does not at all bear on the propriety of the course taken with a view to the original application. I have not the least idea that Messieurs Forbes and Co. had any intention to get the control over the Funds which they did not believe to be in accordance with the wishes of the deceased. As to their disposal or of the residuary Legatee that is another question. Whether a party who has by his conduct or, (I would rather say as it is a less personal expression) by his course of proceeding laid himself open to harsh observation, having established his right afterwards in another way, is entitled to have every thing said against him recalled. Instead of applying the rule to persons of known respectability, let us apply it to one of daily occurrence of establishing a a Gooz-rattee Will where on the whole case the decision of the Court is in the applicant's favor, but there is much of the evidence and conduct contradictory and false. Such a case is quite consistent, for it is a frequent thing there for Men (I dont allude to houses established here) who have a good case, to spoil it by bringing forward false matter to give it color and probability. If this Court has a discretion it would require a vast deal of consideration before it would take the responsibility of exercising it—such a precedent would tend to mischief in general, by enabling a man to conceal the consequences of his conduct; though in this instance as to persons of established character and reputation one might feel inclined to grant it, yet as to persons of a different character it would be dangerous. You must feel that, the Court even if they have the discretion, may have reason to fear that more prejudice would be done by a precedent in such a case as this than protection afforded to those who may be injured by observations which have been already and are commented on. I must take time to consider; for if the Court have a discretion you cannot but feel that the exercise of that discretion involves considerations far beyond that which is involved in the consideration of what is due to the feelings of the person making this application. I do not observe on the correctness or incorrectness of the observations on the existing Evidence. I do not say any thing as to whether conclusions have been arrived at different from what I should have drawn from the same Evidence. I do not enter into these questions. This matter does not come before me as an appeal from the observations objected to. There cannot but be something before the Judge to ground his opinion; and assuming, as I must do, and indeed as I know was the case, that the observations on question of Law and on matter of fact were made bonafide and not with the intention of imputing malpractice other than that amounting to gross irregularity, I cannot but say that granting such an application in an honest case would be a most mischievous precedent for a dishonest one. I have said this to break the case. How far the Court would exercise its discretion if it possess any, but I do not mean to pronounce that it has, for I have considerable doubt whether it has, whether in the next term or whether in its present state without an affidavit of the kind I have referred to, I am not prepared to exercise it. What I state is for the guidance of those whose interests are concerned for their guidance and for the assistance of Counsel if he should feel disposed to mention it again, not intending to bind myself in any way, but merely indicating the present tone of my mind that Counsel may better know to what arguments my mind would incline.

IN THE SUPREME COURT OF JUDICATURE AT BOMBAY.

ECCLESIASTICAL SIDE.

JUDGMENT OF MR JUSTICE ROPER.

In the matter of the administration with the Will annexed of David Forbes, Esq., deceased.

SIR HENRY ROPER'S JUDGMENT, delivered on the twelfth day of February 1841.

An impartial or soothing judgment on this matter can hardly be expected from me; but as my opinion regarding it is already formed, and is, I believe, unalterable, and as I shall not concur in any opinion of the Chief Justice that he can be entitled to order a petition on which I have endorsed my reasons for refusing an application to be taken off the file, I shall at once state my view of the subject. In doing so I shall not hesitate to use strong terms, especially as so much stress has been laid on the respectability of this firm. Their respectability I do not deny, but it does not arise from their conduct respecting the Wills and estates of deceased British subjects in their possession, as I shall explain. According to my idea this Court has too often taken judicial notice of the respectability of the parties, and I imagine these persons have been encouraged by the circumstance to make this application, and have accordingly come into Court trusting in the weight of their name, fishing for compliments, and anticipating concessions. It has always been, and shall still be, my endeavour to make no distinction of persons here; to treat all parties alike, namely according to their deserts. As I should deal with the humblest native so will I deal with Messieurs Forbes and Co, and accordingly express myself strongly respecting their conduct in this affair.

On last Saturday night I was informed this motion was to be made. It seems I was considered a Defendant, and it was thought expedient to give me notice

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of the motion. I am well pleased the application has been made in this manner instead of being framed as a request for leave to withdraw documents on which an unsuccessful motion had been founded. In that shape I should have allowed it to pass sub-silentio; although even then I should have wished to comment on the matter. But one of theee parties, Mr. Forbes, has indulged in personal disrespect towards me upon the occasion. I am aware that such conduct should excite in me no stronger feelings than such as it is unnecessary to mention here; and could I have well avoided further notice of the case I would have done so, lest in observing on the circumstances I should be betrayed into stronger feelings than the affair is worthy of.

It may be wrong in me to allow what has taken place elsewhere to influence me on the Bench, but this is a peculiar case. If my judicial conduct affects the private deportment of a suitor towards me, I cannot help supposing that an application like this on behalf of such suitor is made in a spirit consistent with such deportment; therefore I cannot fancy the application was intended by the parties in the same spirit in which Mr. Crawford has brought it forward; and however he may have clothed it in honeyed words I cannot otherwise consider it than as a personal attack on me—be it so.

I have been put upon my defence, and no longer feel reluctance in re-stating my view of the matter and of the conduct of Messrs. Forbes and Company, and especially of Mr. Charles Forbes and their proctor in relation to the matter Before coming to the grounds on which the opinions I expressed were formed, I will first observe, that the petition for administration with the will annexed, or rather with the alleged copy of the aileged copy of the alleged will annexed, was produced before me in Chambers in the month of October last. The counsel whose name was endorsed on the petition, and who therefore should have moved upon it, did not appear, and I conclude the petition had been put into the hands of the Gentleman who did move upon it, immediately before he brought forward the matter, and without allowing time to investigate the grounds of the application. This is the only way in which I can account for that gentleman's not having brought to my notice the gross defects of the affidavit and Petition, and the many causes for suspicion apparent on the face of the documents. I took the papers home with me, and having read them, and being so unwell as to believe I should be unable to attend at Chambers on the day appointed for giving a decision, I endorsed on the petition my reasons for refusing the application. On the day appointed for doing business in Chambers I was better, and able to attend, but neither the counsel whose name was endorsed on the petition, nor the proctor did attend Had they or either of them been present, an application might have been made to withdraw the petition and the documents annexed to it: no such aplication was made, and as the papers thus came upon the file, I was well pleased that my comments on them and on the case had been endorsed on the Petition, and therefore were also on the file, in reprobation of that negligent and careless mode of framing Documents and affidavits, and even of swearing affidavits, which Mr. Forbes and his proctor had introduced.

The application was altogether refused, and was not subsequently granted on the application being renewed, as stated in the Petition now presented by Forbes and Co. That the Original application was wholly refused is apparent as well from the note I made of my reasons for the refusal as also from the minute made by the Registrar, namely "refused—*vide* within observation of Mr. Justice Roper." At first Mr. Charles Forbes as attorney for the next of kin sought for administration with an *alleged Copy* of an *alleged Copy* of an *alleged will* annexed, the original will being said to be deposited in the office of the Ecclesiastical Registrar of this Court. That application was wholly refused. He then applied for administration with the original will annexed, proving the original will; that the father of the deceased was next of kin and residuary legatee, and that he, Mr Forbes, was attorney for the father. That application was granted. It seems that the letters from Mr. Liddell enclosing the will to Forbes and Co., the letter of Forbes and Co. to the father of the deceased, and certain letters from the proctors of the father of the deceased to Forbes and Co. were annexed to the petition presented on the Second application, but they were not read or brought to the notice of the Court, and I never heard of them before this day.

It seems hardly necessary to discuss the propriety or impropriety of an endorsement by a Judge on the petition, of his reasons for refusing an application. It is a measure I shall not again have recourse to when the reasons are lengthy; but such resolution on my part is not founded on any idea that the making such an endorsement is illegal. Supposing the petition when filed to become a matter of record, still it is not the record of the judgment or decision The endorsement thereon is a mere instruction. It is an every day practice for a judge to endorse his fiat on such a petition, and if, when he sees ground for granting the petition, his endorsement of a fiat be a legitimate proceeding, it is difficult to understand why he should not be at liberty, in refusing the Petition, to endorse in like manner his reasons for such refusal: if he might endorse a fiat so might he a refusal and his reason for the same; if he might endorse one reason or two reasons, on the same principle might he endorse fifty; and if he might endorse reasons palatable and complimentary to the applicant, so might he endorse reasons strongly reflecting on the petitioner. A gentlemen at the Bar has handed up to me a precedent in a book on Chancery practice of a petition on which Lord Eldon seems to have endorsed or signed directions or observations at some length. No doubt several such precedents might be found.

But it has been contended such reasons in this instance were unjustifiable. But that cannot affect the subject; they were my reasons for the decision—They may have been right, or wrong; it may be the misfortune of the suitors or of the country to have me here capable of giving such erroneous grounds for a decision; but so long as it not denied that I assigned such reasons for my decision, so long my endorsement on the petition can hardly be held illegal. It would have furnished a guide to the petitioner in removing objections if the reasons assigned were legitimate, or for procuring a more sound decision, if such reasons were erroneous. But to enable him to succeed in the course he has now adopted he would have to prove that such an endorsement was utterly illegal and to establish that point he would find difficulty—considering that fiats are every day endorsed upon such petitions; and if so, why not refusals, or the reasons for such refusals? Unless he can make out the endorsement to have been illegal he cannot I conceive succeed in this application; which amounts to a demand that the reasons I assigned for my decision be expunged Even if such reasons were erroneous, that circumstance would give him no title to obtain his demand; for the simple question should be, whether those were really the reasons I assigned. I might have exposed myself to ridicule by assigning absurd reasons. Had I done so I ought to be most willing to remove the memorial of my folly. But as the reasons still seem to me to have been warranted by the circumstances of the case, I feel no disposition to cancel them on that score. Had these parties come forward expressing regret for the slovenly manner in which the case, the petition, and affidavits had been got up, I should willingly have acceded to the taking the whole of the documents respecting the unsuccessful motion off the file, but certainly not to the replacing such documents by others of the like nature; for the permitting such defective documents to be upon the file without strong animadversion would ill become the court; and hence a strong argument to prove the propriety of my having endorsed the reasons on the petition; for such proceedings could not be perverted into a precedent, coupled as they were with my observations upon them.

It appears to me these parties have moved for what they cannot obtain without my consent: that the Chief Justice, however anxious to gratify Messrs. Forbes and Co. has no title to grant their application, for he can have no right to say that my reasons for refusing the prayer of the Petition are to be expunged unless it can be shewn that endorsing them on the petition was illegal;—a point on which I have been unable to find any authority. I did search a good deal for information on the subject about nine years ago and before the arrival of Sir Herbert Compton Evidence was being taken down with a view to an appeal, and on my objecting to some particular evidence Mr. Justice Awdry overruled the objection in very strong language, and caused Mr. Ferrier the Prothonotary to insert his decision on the point, verbatim, and at great length on the record. I afterwards taxed myself with not having objected to this proceeding, and searched for authorities, but was unable to find any, and abandoned the matter under the impression that although inserting a Judge's reasons at length in a record might increase the expense, and could be to little purpose when the record was to be laid before the King in Council, yet where a Judge insisted on such a course it could not be effectually objected to

I now come to consider more immediately the grounds on which the decision was formed, and my reasons for expressing myself so as to aggrieve Messieurs Forbes and Co. If the Law as it now stands be defective, it should be altered, but this Court is to administer it as it stands at present, and according as the Law now stands, where a British subject dies leaving effects within the Jurisdiction of this Court, but leaving no executor or next of kin within the Jurisdiction, the Ecclesiastical Registrar is entitled to administer his Estate, and unless creditors intervene it is his duty to apply for and obtain the same accordingly. The Ecclesiastical Registrar is entitled to a discovery of the estate or will of a party so dying intestate, or without leaving any executor or next of kin within the Jurisdiction. They who conceal such Estate or will from the Registrar act illegally, withhold that to which he is entitled, and the Court will enforce the discovery, making the party who wilfully concealed the matter bear the expence When a person practises such concealment in order that he, instead of the Registrar, may obtain Commission for managing the Estate, his conduct amounts not merely to nonfeasance, but to malfeasance, and as cupidity is the motive, such conduct is so far unprincipled, as I said when the application was made to me in Chambers. The Ecclesiastical Registrar here is not allowed to keep balances of Estates in his hands (it is otherwise I believe with the Ecclesiastical Registrar at Calcutta;) but here the Registrar's accounts are regularly laid before the Court and published, and the constant care of the Court is to prevent his holding balances in his hands, and to cause the funds to be invested in Government Securities. Hence safety to the estate of the deceased is better secured by an administration by the Registrar, than by leaving such Estate in the hands of private merchants; and as before observed, such Estate ought to be, and I believe is as cheaply managed by the Registrar, as by any Merchants; although in my opinion both the Registrar and other Administrators receive too high a Commission;—at all events where they have merely to collect or sell out Government securities.

The law and facts are as I have stated; and no pecuniary advantage accrues to the Estate when managed by a Merchant, whilst its security is not so well provided for as if the Registrar had charge of it: still in defiance of law and right, there has been a constant struggle on the part of several Merchants in Bombay to conceal from the Registrar their possession of effects or Wills of deceased persons, the object being that the Registrar, ignorant of his duties and rights, may remain inactive till such merchants shall have succeeded in having themselves appointed on their own representations, to act as attornies in managing the estates.

Emergencies occasionally arise, when an estate suffers materially, unless the funds be managed in a particular manner. Where such an emergency occurs during the period a private Merchant conceals his possession of the will or property, of the deceased, in order that he may ultimately obtain commission for administering, there is no representative of the deceased, and the requisite measures for protecting or improving the Estate cannot be adopted—In a recent case, the Accountant General of the E. I. company having concealed from the Registrar, that he possessed Government paper belonging to the estate of a deceased British subject, a loss of some thousands of Rupees accrued to the estate, but the Bombay Government have provided against similar conduct on the part of their Accountant General in future.

That such struggle and concealment by several Merchants has existed, no candid man in this court will deny.—It must consist with the experience of the Chief Justice, who has been ten years in the country, and when I say, that Messrs. Forbes and Co. have been for years the foremost, or amongst the foremost, in perusing such courses, I shall be grateful to any one who will set me right if I be in error. I had all these matters in view when the application was made to me in Chambers, and I well recollect the registrar saying in reply to my question as to what had been done with the will during the long period elapsed since the Testator's death—"That he had never seen or heard of the will until the day before that on which the petition was brought forward."

Why such systematic infraction of the law by Messrs. Forbes and Company and others, has been hitherto permitted, it is immaterial to enquire; but Sir Edward West, whilst Chief Justice here, was uncle to the then Ecclesiastical Registrar. Sir Herbert Compton, the last Chief Justice, was father to the present Ecclesiastical Registrar Hence delicacy may have been felt about vindicating what was due to the law. I stand in no such relation to the present Registrar, as should make me backward to perform what I consider a duty in the matter, and I am not disposed to ingratiate myself or to seek that species of popularity which might be acquired by compromising or neglecting it.

Let us now look at the circumstances connected with the motion made before me in Chambers, and let us consider whether I had not strong grounds for suspicion.

Whether there be not still strong ground for suspicion; whether the case and the documents on which it was founded were not got up in a most slovenly and discreditable style; and whether Mr. Forbes did not afford ample ground for my believing he had made the affidavit in a most negligent manner, in so much that I should have been justified in expressing my sense of his conduct in stronger terms than I employed; and whether it was misplaced delicacy on my part to palliate those strong terms by orally observing, as I then did, that much allowance should be made for Mr. Forbes on the ground of his youth and inexperience.

I would premise, that probate or administration granted in England, will not extend to property in India. That if a man leaves no property in England but only in India, probate of his will in England is unnecessary, and a useless expense; that where a man dies in India, or his will is in India, and he has property in India, his will should be proved in India, and that concealing the existence of such will is, as already intimated, highly reprehensible.

Dr Forbes died on his way to Kunda in the month of November 1839—no application for probate of his will or letters of administration for his estate was made till the month of October 1840. On observing these particulars, I concluded this case afforded an additional instance of the nearly uniform misconduct of Messrs. Forbes and Co. respecting the effects and wills of deceased British subjects in their custody. I concluded they had concealed their possession of the effects of Dr. Forbes, and had also concealed their possession of the will of the deceased. What are the facts?

The will I was afterwards assured by the Counsel for Messrs. Forbes and Co. had not been received by them till about the month of September 1840; but they knew of the death of Dr. Forbes long before that period, as appears from their letter to Captain Liddell, dated 1st January 1840, which letter I first become aware of this day. It then became their duty to take some steps in this Court regarding the Will, and to disclose instead of concealing, that they possessed effects of the deceased. What was their motive in suppressing the Will and concealing the effects?—not the saving money to the estate, for the course pursued must, if the costs thereof be allowed, put the estate to a heavier expense than if the Registrar had administered. Cupidity was their motive, in order that they might ultimately obtain that commission, which, if the Registrar had known the circumstances, and had performed his duty, he (the Registrar) would have been entitled to. But further Mr. Andrew Farquharson, a Member of *this* firm of Forbes and Co., had been appointed executor of the Will, and had proceeded to England about the month of February 1840. After his arrival in England, this extraordinary document was obtained from the prerogative court of Canterbury; by what means, or with what views, the parties engaged in the matter best know. I could only surmise and suspect, this document purports to attest amongst other things, that it had been *alleged* the original will was in India, either in the hands of a Mr. Liddell, or deposited in this court, and that a copy deposited in the prerogative Court was *alleged* to be the most authentic copy that could be procured at the time. How very loose is all this! The document further *professed* to attest, that Mr Farquharson renounces the executorship. That the father of the deceased was next of kin; that no residuary legatee had been named in the will, and that administration with the *alleged* copy of the *alleged* will annexed was therefore committed to the Testator's father. I did certainly at first suppose Mr. Farquharson had evaded to take out probate or renounce here, and had taken the copy of the will with him to England. I was afterwards informed by counsel, that the will had not been received by Forbes and Co. till after Mr. Farquharson's departure, and that the copy had been sent after him I must therefore plead guilty to having suspected Mr. Farquharson had taken the copy of the will with him to England, but it cannot be said, I had no ground for suspicion—The systematic misconduct of Forbes and Co., respecting the estates and wills of deceased British subjects in their hands, induced such suspicion; and it was their business in stating grounds for their application in Chambers, to obviate suspicions so induced, and especially to account for every extraordinary circumstance in this most irregular case. Besides, it now appears from Mr. Liddell's letter to them, that Forbes and Co. knew the deceased had left a will, and that Mr Farquharson was therein named executor long before Mr. Farquharson left Bombay. If so, why did they not do something respecting the will and estate? or why did they not show in their petition and affidavit, either that they had done something, and what it was, or why they had refrained from doing any thing, and why they had so long concealed their possession of the estate of the deceased.

Moreover, on looking at the *alleged* copy of the *alleged* copy of the *alleged* will it was apparent, that the whole of the property contemplated by the *alleged* will of the deceased was in Bombay,—where then was the necessity or the propriety of taking out a prerogative grant of administration in England? a most unnecessary and improper expense? where were the bona notabilia? I at first fancied Forbes and company might have remitted the ready money to England, without any probate or administration having been granted here; and that afterwards finding they could not sell the Government securities without probate or letters of administration, and the Executor being in England, they had sought to extricate themselves from the difficulty by procuring this most irregular and suspicious document from the prerogative court. Such was at first my suspicion regarding this part of the case, but I abandoned it on observing, that according to the marginal note on the exemplification procured from the prerogative court, the alleged bona notabilia had been sworn under £20, vizt. sworn not to amount to such a sum as rendered the payment of any duty necessary; still my suspicions in this respect, though erroneous, were not groundless. The systematic evasion of, and opposition to, the law by Forbes and Co. regarding the estates and wills of deceased British subjects in their possession, compelled me to suspect such misconduct in so irregular a case as this; and where the extraordinary features of the case were not accounted for in such a manner as to obviate those suspicions by the documents supporting the petition. But although the bona notabilia having been sworn under £20 convinced me that the ready money had not been remitted to England, and there misconstrued into bona notabilia, still the fact, that the bona notabilia were so sworn, not to exceed £20, added to the tenor of the will lemoring that the whole property of the deceased was in India leaves little doubt, or rather no doubt in my mind, that in fact there were no bona notabilia whatever within the province of Canterbury, and that this most suspicious irregular document has been obtained improperly and by some malpractice, by which term I do not mean that the matter is consummated with absolute swindling, or cheating, or fraud, although in the alleged existence of bona notabilia there was a suggestio falsi; and although in the insinuations against the Registrar contained in the letter of Forbes and Co. to the father of the deceased, there may have been the suppressio veri and suggestio falsi combined, and all for the sake of pocketing the Commission; but I did, and do, suspect the matter was tainted with subtelty and craft, and I have no doubt the instrument was obtained and issued most negligently and ignorantly. Such impressions on my mind arise not merely from believing there were no bona notabilia whatever within the province of Canterbury, but also from my being unable to find any precedent for granting probate of a copy of a will where the original has not been shown to be lost, and where the copy has not been proved to be a copy; or any precedent for granting administration with an alleged copy of an alleged copy of an alleged will annexed upon such mere suggestions as appears from this instrument to have been made, respecting the alleged original will and the alleged copy of the same. Such impressions are rendered very strong indeed, when I find this prerogative instrument, alleging there had been no residuary legatee appointed, whereas according to the copy of the alleged copy of the alleged will which it contains, the father of the testator, the very next of kin himself, is appointed residuary legatee—are not these matters badges of ignorance and malpractice? are not they grounds for suspecting this document has been unduly and irregularly obtained?—especially when preferred by parties who for years have persisted in opposing and endeavouring to evade the law with respect to the effects of deceased British Subjects in their possession.

I know not why or wherefore this document was obtained. I could only surmise that the executor being in England, and not having proved the will or renounced here, he might have fancied his renunciation was necessary to enable his partners or one of them to administer the estate here on behalf of the next of kin, and pocket the commission; that therefore the proceeding may have been got up as a renunciation of the Executor and a granting of administration to the next of kin, under the mistaken notion, that such document could be binding in this Court, by the letter from Forbes and Co. to the father of the deceased, and of which I this day first became aware, it is obvious that my surmises and suspicions were well founded, and almost in every particular consistent with the facts.

No blame is imputable to Mr. Charles Forbes regarding the matters I have last mentioned, for he had only become a member of the firm shortly before the application in Chambers was made. But without dwelling on the ignorance of the proctor who brought forward a petition for administration with an alleged copy of an alleged copy of an alleged will annexed, and accompanied by such a thing as this instrument procured from the Prerogative Court, and all as a matter of course and without adducing any thing explanatory to account for the extraordinary features in the case or to obviate suspicions or doubts arising from such features, I now come to consider the form and style of the Petition, and the affidavit sworn by Mr. Charles Forbes.

In this Court we have no such proceeding as proving a will in common form, or as a mere matter of form, such a practice here would lead to endless flaws and perjuries. In my experience I never knew an affidavit in support of a Petition for administration or probate in this Court which did not enumerate and specify the several matters intended to be verified, distinguishing those positively sworn to, and those regarding which the party making oath could merely speak as to his information or belief. In this instance, the slovenly petition was sought to be verified by an affidavit in these terms (Affidavits read). What things did the swearer know of his own knowledge? What things did he merely attest according to his information or belief? What were the grounds of his alleged knowledge or belief? Did, he in fact, upon any just or reasonable grounds, know or believe any thing about the matter? or was his alleged knowledge and belief founded altogether on hearing or suggestions? What reliance can be placed on such an affidavit or testimony so expressed? I asked for precedents for such an affidavit from the files of the Court; not one could be or was produced. But examine the petition to which the affidavit refers. The first four or five lines are a jargon of bad English and French—Mr. Forbes adopted it and swore to such jargon accordingly. The petition then states matters of law and matters of fact—and matters of law and fact combined, to all which Mr. Forbes roundly swore, and amongst other things that Mr. Farquharson was appointed agent of the deceased. The word agent indeed is introduced in the Will, but every lawyer knows the effect of that passage was to appoint Mr. Farquharson Executor of the Will of the deceased. To speak of a man being the agent of a dead man is to talk nonsense, but such absurdities and such difficulties will involve those who rashly or ignorantly take upon themselves to swear to matters of law and matters of fact. A proper sense of the obligation of an Oath should have induced Mr. Forbes to make more accurate distinctions, to refrain from swearing loosely and in the lump to points of law and matters beyond his comprehension, and to things of which he had no positive knowledge. He should have paid more attention to the petition which he undertook to verify.

A most eminent man—the Bishop of London—has spoken of the natives of this country as inferior to the British in adherence to, and regard for truth, and to the best of my Judgement, I never heard of, or knew any person impartial and competent to give an opinion on the subject, who did not agree with the Bishop of London. An opposite doctrine has been maintained by some who probably might see nothing objectionable in this affidavit by Mr. Charles Forbes. For my part, being convinced that if such affidavits were permitted, the morality of all classes, so far as adherence to truth is concerned, would soon be on a level; and being unable to find any precedents for such affidavits, I shall always to the utmost of any ability reprehend and reject them.

JUDGMENT OF SIR J. AWDRY.

AWDRY, C. J.—If the learned Counsel wishes to be heard with reference to the observations which I threw out I shall be most happy to hear him.

I have had some time to reflect on this matter during the delivery of Mr Justice Roper's Judgment, and as the question involves some personality, it is desirable, I think, that it should be disposed of early I shall endeavour to steer clear of any thing like personal animadversion, and give simply the opinion which I have formed.

With regard to the correctness of the reasons for refusing the Petition, I consider that there is no question now: all that it seems to me I can consider is, whether if they are relevant, (for I cannot in default of authority say, that as an order, whether general or special that may be written on a Petition) the assignment of the reasons can be inadmissible except perhaps as a matter of discretion, still less can I say, that if an entire term has elapsed in the interval, the removal from the file can (except in an extremely strong case) be proper. I do not think it necessary to meet the question, whether the consent of the judge whose observations they are would be material. My own strong learning is that it is not; for an objection to the removal from the file certainly arises from the effect which it would have on his judicial responsibility. I feel that I am bound to give my own opinion, and as unfortunately the Court is not full, I have the individual responsibility of acting upon it in case of a difference of opinion, I may perhaps (because I should have expected precedents to evidence Jurisdiction if it really existed) incline against the Jurisdiction to remove a document properly on the files of the court, on the ground that it is inclosed with, relevant, and therefore not scandalous matter, but I think that to do this particularly as an entire term has elapsed, would be (if competent) so mischievous in point of precedent, that if the court has authority it ought not to be exercised in a case where the reasons for the Judgment (whether sound or not) were such as so fairly arose on the Evidence, that they might without question have been orally made in open Court."

Application refused.

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